

Cabdcoll

Trial

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

07 Cr. 1170 (LAP)

5 JOSEPH P. COLLINS,

6 Defendant.

7 -----x

October 11, 2012  
10:10 a.m.

8 Before:

9 HON. LORETTA A. PRESKA,

10 District Judge

11 APPEARANCES

12 PREET BHARARA

13 United States Attorney for the  
Southern District of New York

14 BY: HARRY A. CHERNOFF

MICHAEL A. LEVY

15 EDWARD A. IMPERATORE

Assistant United States Attorneys

16 COOLEY LLP

17 Attorneys for Defendant

18 BY: WILLIAM SCHWARTZ

JONATHAN BACH

LAUREN GERBER LEE

19 - also present -

20 Kathryn Searles

21 Robert Clark,

Postal Inspectors, U.S. Postal Inspection Service

22 Gary Smith,

23 Paralegal, U.S. Attorney's Office

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Trial

(Trial resumed; jury not present)

THE COURT: Are we ready to bring the jurors in, ladies and gentlemen?

MR. LEVY: Your Honor, we have one small problem. Not to lay blame, but the defense did something with the technical equipment and as a result we no longer have pictures on your screen or the witness' screen.

THE COURT: All right. Give him the hard copy.

MR. LEVY: He has the hard copy and that is good enough.

THE COURT: All right. If we get here earlier we can avoid these tech issues.

May we bring the jurors in, please?

At least send your tech people in earlier.

MR. LEVY: We didn't.

(Continued on next page)

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Trial

1 THE CLERK: Jury entering.

2 (Jury present)

3 THE COURT: Off the record.

4 (Discussion off the record)

5 SCOTT ALAN SCHOEN,

6 resumed by the Government, testified further as follows:

7 THE COURT: Good morning, all.

8 Ladies and gentlemen, we continue with the direct  
9 examination of Mr. Schoen.

10 Mr. Levy.

11 MR. LEVY: Thank you, your Honor.

12 DIRECT EXAMINATION (Resumed)

13 BY MR. LEVY:

14 Q. Good morning, Mr. Schoen.

15 A. Good morning.

16 Q. Yesterday we were talking about the EPMA, which I believe  
17 you said was the final contract between Thomas H. Lee Partners  
18 and Refco and RGHI to accomplish this transaction, is that  
19 right?

20 A. Yes, that's right.

21 Q. And we walked you through some of the provisions of the  
22 EPMA, is that right?

23 A. Yes.

24 Q. Now, upon the signing of the contract, the execution of the  
25 contract, is that it? Was the deal done at that point?

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1 A. No.

2 Q. When was the deal actually closed?

3 A. The deal closed in -- I think it was August 5th, 2004.

4 Q. And do you have in front of you the timeline -- give me one  
5 moment and I can figure it out -- which is Government Exhibit  
6 825?

7 A. Yes.

8 Q. Do you have a copy of it in front of you?

9 A. I do.

10 Q. You do, all right.

11 Does that accurately reflected on there the  
12 transaction closing August 5, 2004?

13 A. That's correct.

14 Q. Now, if we could put Government Exhibit 835 on the screen,  
15 which was that summary of the proceeds of the deal.

16 And this mentioned that in the neighborhood of  
17 \$1.8 billion in cash would be coming from Thomas H. Lee  
18 Partners and from the various lenders, is that right?

19 A. Yes.

20 Q. So some of that money was going to be borrowed, right?

21 A. Correct.

22 Q. At the end of the day, when the deal was finally closed,  
23 how much was borrowed?

24 A. \$1.4 billion.

25 Q. What were the sources of that borrowing?

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Schoen - direct

1 A. There was \$800 million senior debt, or bank debt, and \$600  
2 million of notes, sometimes called bonds, which are junior  
3 debt. They have higher interest rates but they are junior in  
4 terms of their preferences if there is a problem with the  
5 company in terms of getting paid back.

6 Q. Just quickly, what does that mean to be junior debt, as  
7 opposed to senior debt?

8 A. It just means if there is ever a time when debt is going to  
9 be repaid, the senior debt gets repaid first.

10 Q. So if there were issues and a company was unable to pay all  
11 of its debt, senior debt gets repaid first and junior debt has  
12 to wait in turn, essentially?

13 A. That's correct. That's why junior debt typically charges a  
14 higher interest rate; it has more risk.

15 Q. Now, at the time -- let me put the timeline back up, 825.

16 At the time the EPMA was signed, had the lenders  
17 already been found and had they committed to this transaction?

18 A. We had commitments from senior bank lenders to underwrite  
19 the bank debt, although they had to go out and sell it to a --  
20 they had the right to sell it to a broader group of banks,  
21 bring in a large group of banks to participate in the loan.  
22 And they had provided us back stock commitments to the bonds,  
23 to the notes, but we had not yet sold any notes to any note  
24 investors.

25 Q. So were there presentations that needed to be made to these

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1 various potential lenders?

2 A. Yes. That's one of the important things that happens  
3 between the signing of the contract and the closing is we go  
4 out and we arrange or sell the debt financing.

5 Q. Were there written materials that were provided to the  
6 potential lenders?

7 A. Yes.

8 Q. Do you have in front of you what's been marked for  
9 identification as Government Exhibit 1008?

10 A. Yes.

11 Q. Just briefly, can you describe what Government Exhibit 1008  
12 is?

13 A. It's titled "Lenders Presentation," and it is the materials  
14 that were used in the meetings that we had with the banks and  
15 with the potential noteholders.

16 MR. LEVY: your Honor, the government offers  
17 Government Exhibit 1008.

18 MR. BACH: No objection.

19 THE COURT: Received.

20 (Government's Exhibit 1008 received in evidence)

21 BY MR. LEVY:

22 Q. All right. This says, "Refco Lenders' Presentation," and  
23 there is a date on it, July 12, 2004, is that right?

24 A. Yes.

25 Q. So that is roughly a month after the EPMA was signed and

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1 roughly a month before the transaction actually closed, is that  
2 right?

3 A. Approximately.

4 Q. What was the purpose of preparing these materials?

5 A. We worked with the company, with the management, to provide  
6 potential lenders all the information that they needed to  
7 decide whether they wanted to make a loan to the company to  
8 help us finance the transaction.

9 Q. The date on this, does that refer to a specific meeting?

10 A. Yes, it does.

11 Q. And who was that meeting with?

12 A. It was organized by the investment banks that were helping  
13 us raise the debt, but it was a meeting between the management  
14 team of Refco and potential lenders.

15 Q. Where did that meeting take place?

16 A. It was somewhere in midtown New York. I don't recall.

17 Q. Mr. Collins was not present at that meeting, is that right?

18 A. I don't believe so, no.

19 Q. What types of information are presented in this document?

20 And maybe as you are saying that, if we could scroll  
21 through.

22 A. Two types. One is the kind of information that we've  
23 talked about before, which is descriptive information about the  
24 business, its historical performance, its management team, its  
25 industry, and then there is also detailed information about the

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1 terms of the proposed debt financing.

2 Q. Could we please turn to page 53.

3 A. OK.

4 Q. At the top it says, "Risk Management Overview," is that  
5 right?

6 A. Yes.

7 Q. And then if you go down to the first bolded bullet point,  
8 it says, "Historical risk and loss experience has been  
9 approximately \$1 million over the preceding five years."

10 In the course of your negotiations with Refco, had  
11 Refco's management made that claim to you?

12 A. Yes.

13 Q. Do you remember specifically who at Refco's management made  
14 that claim to you?

15 A. I believe it was in the offering materials that were  
16 originally presented to us, and it was also repeated by both  
17 Mr. Bennett and Mr. Trosten.

18 Q. What did you understand that to mean, that historical risk  
19 and loss experience has been approximately \$1 million over five  
20 years?

21 A. I understood it to mean that the company had been very good  
22 about executing on its business for customers. We knew that it  
23 had traded billions and billions of dollars of transactions on  
24 behalf of customers, or executed on behalf of customers, and it  
25 suffered very small losses.



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1 Q. During the course of your negotiations with the due  
2 diligence in this transaction, did anyone ever tell you that  
3 Refco had actually suffered hundreds of millions of dollars in  
4 losses over the preceding years?

5 A. No.

6 Q. Did anyone tell you that Refco had simply pushed those  
7 losses off of its own books and onto RGHI's books?

8 A. No.

9 Q. Could you turn two pages, to page 55.

10 This says, "Historical Financial Performance, Robert  
11 Trosten - Chief Financial Officer."

12 Is this the beginning of a section that Mr. Trosten  
13 presented at the meeting?

14 A. Yes.

15 Q. And did he actually present this live at the meeting?

16 A. He did.

17 Q. During that presentation, did either Mr. Trosten or this  
18 document inform the potential lenders that Refco owed more  
19 than \$1 billion in related party debt -- I'm sorry, Refco was  
20 owed more than \$1 billion in related party debt by RGHI?

21 A. No.

22 Q. Were Refco's financial statements provided to the potential  
23 lenders at any point in connection with this transaction?

24 A. Yes, they were.

25 Q. Did those financial statements reveal to the potential

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1 lenders that Refco was owed more than \$1 billion in related  
2 party debt by RGHI?

3 A. No.

4 Q. Did either Mr. Trosten or this document or anything else  
5 that you are aware of inform the potential lenders that even  
6 after the transaction closed, even after all the proceeds that  
7 we've described, RGHI would still owe Refco hundreds of  
8 millions of dollars in related party debt?

9 A. No.

10 Q. Were you aware at the time of this meeting that Refco was  
11 owed more than a billion dollars in related party debt and  
12 would be owed hundreds of millions even after the transaction  
13 closed?

14 A. I was not.

15 Q. So did you realize that anything was being hidden from the  
16 potential lenders?

17 A. No.

18 Q. Do you have in front of you what's been marked for  
19 identification as Government Exhibit 5008?

20 A. Yes.

21 Q. What is Government Exhibit 5008?

22 A. This is the offering circular for the notes, the junior  
23 debt that I described earlier.

24 Q. So the document that we were just looking at, the  
25 presentation, was for which portion of the debt that we've been

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1 talking about?

2 A. It's called the bank meeting, but actually potential note  
3 investors were able to participate in part of that meeting as  
4 well.

5 Q. So that was for -- that presentation we just looked at was  
6 for both of the banks that were going to lend the 800 million  
7 and the noteholders that were going to purchase the 600  
8 million?

9 A. That's correct.

10 Q. This document, 5008, only relates to the 600 million that  
11 were going to be sold in bonds or notes?

12 A. Yes.

13 MR. LEVY: Your Honor, the government offers  
14 Government Exhibit 5008.

15 MR. BACH: No objection.

16 THE COURT: Received.

17 (Government's Exhibit 5008 received in evidence)

18 MR. LEVY: All right. Mr. Smith, could you please  
19 expand just the title area, essentially, of that document.

20 Thank you.

21 Q. This says, "Confidential offering circular, \$600 million,  
22 Refco," and then below that it says, "9 percent senior  
23 subordinated notes due 2012."

24 Is that right?

25 A. Yes.

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1 Q. Who buys these notes or bonds? Who are the investors?

2 A. They are typically institutional investors.

3 Q. What does that mean?

4 A. They are large pools of money who are in the business of  
5 investing in this kind of debt and are experts at it.

6 Q. Do you have the actual hard copy of 5008 in front of you?

7 A. Yes, I do.

8 Q. And is that document more than 200 pages long?

9 THE COURT: Are you going to ask him to weigh it?

10 A. It appears to be, yes.

11 Q. All right. What type of information is provided in that  
12 document?

13 A. Again, there is detailed information about the company, its  
14 business, its historical performance, its management team, its  
15 industry. There is information about potential risks that the  
16 company faces so that investors are aware and fully informed  
17 about risks as well as opportunities. The audited financials  
18 are included in the offering circular, and the detailed terms  
19 of the notes themselves, the loans that these investors are  
20 being asked to make to the company.

21 Q. This is what is commonly known as a disclosure document, is  
22 that right?

23 A. Yes.

24 Q. It gives investors information about what they may be  
25 investing in?

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1 A. The intent is to give them all the relevant information  
2 that they need to make an investment decision.

3 Q. Could you please turn to page F1.

4 And, Mr. Smith, if you could bring up that that  
5 paragraph. Thank you.

6 This says, "Index to Consolidated Financial  
7 Statements."

8 Were Refco's financial statements attached to this  
9 offering circular we have been looking at?

10 A. Yes, in the F pages.

11 Q. Why?

12 A. It is part of the disclosure that enables investors to be  
13 fully informed before they make an investment decision.

14 Q. Did this offering circular inform the potential noteholders  
15 that Refco at that point in time was owed more than \$1 billion  
16 in related party debt by RGHI?

17 A. No.

18 Q. Did this offering circular inform the potential note  
19 holders that even after this transaction closed Refco would be  
20 owed hundreds of millions of dollars in related party debt from  
21 RGHI?

22 A. No.

23 Q. Were you aware of either of those things at the point that  
24 this document was prepared?

25 A. I was not.

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1 Q. So did you realize that anything was being hidden from the  
2 potential investors in the notes?

3 A. No.

4 Q. All right. We can put that document to the side.

5 You said the closing on this transaction was August 5,  
6 2004, is that right?

7 A. That is correct.

8 Q. What happens at a closing?

9 A. All of the documentation that has been assembled for the  
10 transaction, so you start with the contract but there is an  
11 awful lot of other documentation, but the most important  
12 documentation relating to the purchase and sale of the debt,  
13 documentation relating to the purchase and sale of the equity,  
14 all of that documentation is assembled and it's signed by the  
15 parties at the closing. And then what happens is that the  
16 buyers buy and the sellers sell. So essentially the money is  
17 funded; the money is borrowed from the banks and the  
18 noteholders. The cash comes in. We invest our equity. And  
19 that cash is used for the various purposes described in the  
20 transaction, essentially to buy the company, to buy the  
21 interest in the company.

22 Q. Do you remember if you were physically present at the  
23 closing on this deal?

24 A. I was not.

25 Q. What is a closing binder?

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1 A. A closing binder is a reference to what is usually formed  
2 as a bound document after the closing, where the attorneys take  
3 all the documents that are assembled on a table during the  
4 course of the closing and they put them into a giant book or  
5 several books so that they are all in one place in a bound  
6 binder.

7 Q. Who gets the copies once they are created?

8 A. The attorneys typically get copies of them, and we normally  
9 get a set as well as investors and then keep them in our  
10 offices.

11 Q. When is the closing binder typically prepared, how long  
12 does it take?

13 A. Within the weeks or months after the closing, depending on  
14 how fast the lawyers are moving and how fast the printer is  
15 moving.

16 Q. Once you get the closing binder for a deal that's now done,  
17 do you typically sit down and review what's in it?

18 A. No. We typically put it on a shelf.

19 Q. You testified earlier that you had a conversation with  
20 Phillip Bennett in which he told you that after various  
21 expenses RGHI was going to clear, was going to net about  
22 \$1.4 billion in proceeds from this transaction, is that right?

23 A. After various expenses and payoffs, that the remainder for  
24 Mr. Bennett and Mr. Grant, as the 100 percent owners of RGHI,  
25 \$1.4 billion.

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1 Q. Do you recall who initiated that conversation on that  
2 subject between you and Mr. Bennett?

3 A. My partner David Harkins and I initiated the conversation.

4 Q. Why did you ask Mr. Bennett about that?

5 A. We were most interested in assuring ourselves that  
6 Mr. Bennett's portion of the transaction, the amount of money  
7 he was taking out and putting in his pocket, as compared to the  
8 amount that he was investing back in as our partner, that we  
9 had a real commitment from him. Just as an example, if he was  
10 taking a billion dollars out and reinvesting \$5 million, we  
11 wouldn't have felt that was a very strong vote of confidence.  
12 In this case we believed that he was reinvesting more than  
13 two-thirds of his share of the sale back into the company.

14 Q. So how much Mr. Bennett chose to take out in cash and how  
15 much he chose to reinvest in the company was something that was  
16 important to Thomas H. Lee Partners?

17 A. It was.

18 Q. Do you recall when this conversation on this topic took  
19 place?

20 A. I believe it was -- I believe it was prior to the signing  
21 of the contracts. So it was in early June.

22 Q. Now, Mr. Collins was not a participant in this  
23 conversation, is that right?

24 A. He was not.

25 Q. During that conversation did you ask Mr. Bennett how the



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1 \$1.4 billion was going to be split between Mr. Bennett and his  
2 co-owner, Mr. Grant?

3 A. I did.

4 Q. What did Mr. Bennett tell you on that subject?

5 A. He told me that even though they were 50/50 owners, that  
6 because we and he both wanted Mr. Grant to sell out his entire  
7 position, while Mr. Bennett was going to stay in, that he had  
8 to pay Mr. Grant a premium. And so the split was going to be  
9 closer to 800 million for Mr. Grant and 600 million for  
10 Mr. Bennett.

11 Q. Did that split make sense to you?

12 A. It did.

13 Q. Why?

14 A. It is essentially paying a premium for control and for  
15 buying Mr. Grant out.

16 Q. As of the closing, do you recall having an understanding as  
17 to whether or not Mr. Bennett was going to provide you with the  
18 actual contract that he had with Mr. Grant to accomplish this  
19 split?

20 A. I believe we requested it. I was informed sometime within  
21 a day or two prior to the closing that rather than seeing that  
22 contract, or that agreement, that we would get representations  
23 and warranties from Mr. Bennett and Mr. Grant regarding  
24 termination of Mr. Grant's interest in the company.

25 MR. BACH: Judge, again, can we know who the speaker

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1 was?

2 THE WITNESS: I was informed by my counsel.

3 THE COURT: All right. Here's the deal. You get to  
4 ask on your cross-examination. OK?

5 All right.

6 MR. LEVY: Thank you, your Honor with.

7 MR. BACH: Judge.

8 THE COURT: Sir.

9 MR. BACH: The concern is just a hearsay concern.

10 THE COURT: OK. Mr. Levy, keep an eye on it, please.

11 MR. LEVY: I will, your Honor. Thank you.

12 BY MR. LEVY:

13 Q. Going back to your last answer, was it your expectation  
14 that -- by the time of the actual closing, was it your  
15 expectation that you were going to be provided with this  
16 agreement between Mr. Bennett and Mr. Grant, or that you were  
17 going to accept his representations?

18 A. I understood that we were not going to receive the  
19 agreement and we were going to accept the representations  
20 instead.

21 Q. Now, as you sit here today, have you in fact seen the  
22 agreement between Mr. Bennett and Mr. Grant?

23 A. I have.

24 Q. Did it provide that Mr. Grant was going to get \$800 million  
25 in cash at the closing, as you were told?

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1 A. No.

2 Q. How much did the agreement that you've now seen show  
3 Mr. Grant was going to receive in cash at the closing?

4 A. \$4 million.

5 Q. Do you have in front of you Government Exhibit 1005.28?

6 A. Yes.

7 Q. Is that the agreement that you have now seen between  
8 Mr. Grant and Mr. Bennett dividing up the proceeds of this  
9 transaction?

10 A. Yes.

11 MR. LEVY: Your Honor, the government offers  
12 Government Exhibit 1005.28 pursuant to stipulation.

13 MR. BACH: No objection.

14 THE COURT: Received.

15 (Government's Exhibit 1005.28 received in evidence)

16 MR. LEVY: Mr. Smith, could you bring up the top just  
17 sort of third. Exactly. Thank you.

18 Q. This says, "Stock Purchase Agreement. This stock purchase  
19 agreement, dated as of August 2, 2004" -- I am going to pause  
20 for a second.

21 That is three days before the closing on the Thomas H.  
22 Lee Partners' transaction, is that right?

23 A. Yes.

24 Q. It says, "This agreement is between Phillip R. Bennett, the  
25 buyer, and Tone N. Grant, the seller."

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1 And you've seen this agreement -- you've read through  
2 this agreement since the transaction, is that right?

3 A. That is correct, since the bankruptcy.

4 Q. Since the bankruptcy. You had no idea about the existence  
5 of this agreement or at least the terms of this agreement prior  
6 to Refco going bankrupt?

7 A. I had no idea about the terms of this agreement.

8 MR. BACH: Objection.

9 THE COURT: Sir. I'm sorry, sir?

10 MR. BACH: I'm sorry. He rephrased -- I think he  
11 caught himself and rephrased the question in a compound way.

12 MR. LEVY: I will be happy to ask it again, your  
13 Honor.

14 BY MR. LEVY:

15 Q. Were you aware of the -- let me back up.

16 You were aware that there was an agreement between  
17 Mr. Grant and Mr. Bennett, at least according to what you had  
18 been told by Mr. Bennett, is that right?

19 A. That is correct.

20 Q. Had you ever seen this agreement itself, this document,  
21 prior to Refco going bankrupt in October of 2005?

22 A. No.

23 Q. In fact, was the first time that you saw this agreement,  
24 this actual document, when a prosecutor from the U.S.  
25 Attorney's Office showed it to you?

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1 A. That's correct.

2 Q. Can you please turn to page 2.

3 Do you see on this second page where it says, "Cash  
4 Amount"?

5 A. Yes.

6 Q. It says, "Cash amount means \$4 million dollars plus the  
7 estimated tax amount." Is that right?

8 A. Yes.

9 Q. At any point before this transaction closed, were you  
10 aware -- by "this transaction," I mean Thomas H. Lee Partners'  
11 investment -- were you aware that Mr. Grant was not getting  
12 \$800 million at the time of the closing and in fact was getting  
13 \$4 million plus an estimated tax amount?

14 A. No.

15 Q. If you had known that, if you had known that Mr. Grant was  
16 getting \$4 million at the closing, would you have been  
17 surprised by that?

18 A. I would have been shocked.

19 Q. Why?

20 A. There are a number of reasons. First, it would have been  
21 directly contrary to what I had been expressly told by  
22 Mr. Bennett. Second, it would have raised the question of  
23 where all the cash was going, and it would have made no sense.  
24 And it would have absolutely led to all kinds of further  
25 discussion and inquiry, and probably would have led quickly to

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1 the end of the deal, to the deal not happening.

2 Q. When you say it's inconsistent with what you understood  
3 about the deal, what do you mean by that? Why is this number  
4 so shocking?

5 A. Well, if Mr. Grant owned 50 percent of the company and was  
6 being paid \$4 million, then we -- I didn't understand then and  
7 I don't understand now where all the billion-four went.

8 Q. As you sit here today, do you know whether the defendant,  
9 Mr. Collins, knew that Mr. Grant was only getting \$4 million in  
10 up-front cash from this deal?

11 A. I don't know.

12 Q. Do you have in front of you what's been marked as  
13 Government Exhibit 805?

14 A. Yes.

15 MR. LEVY: Your Honor, the government offers  
16 Government Exhibit 805 pursuant to the stipulation about the  
17 authentic records of Mayer Brown.

18 MR. BACH: No objection.

19 THE COURT: Received.

20 (Government's Exhibit 805 received in evidence)

21 MR. LEVY: Can we put up the first -- yes, exactly,  
22 that part.

23 It looks like we cut some off.

24 (Pause)

25 I think the only part I think we need is where it says

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1 "Original Message" at the top, everything down through the  
2 second original message. So about half of what's up there now.

3 Right. Thank you.

4 Q. Let's look at the middle message on here.

5 This is an embedded chain of e-mail messages, is that  
6 right?

7 A. Yes.

8 Q. And the message in the middle says it's from a woman named  
9 Angela Lang, is that right?

10 A. That's correct.

11 Q. And it is to Joseph Collins, is that right?

12 A. Yes.

13 Q. And the date on that is June 3, 2004?

14 A. That is correct.

15 Q. And the subject is regarding "Grant Agreement," is that  
16 right?

17 A. Yes.

18 MR. LEVY: Your Honor, at this point the government  
19 would move to admit a stipulation, Government Exhibit 780-S,  
20 and I would ask to be allowed to read that.

21 THE COURT: Fact?

22 MR. LEVY: Fact stipulation.

23 THE COURT: The same rules, ladies and gentlemen.  
24 This is evidence for your consideration, and you must regard  
25 these facts that are set out in the stipulation as true.

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Schoen - direct

1 Mr. Levy.

2 MR. LEVY: And it says that the parties agree in 2004,  
3 Angela Lang and Alan Van Dyke were Joseph Collins' law partners  
4 at the law firm of Mayer, Brown, Rowe & Maw.

5 This e-mail says from Ms. Lang says:

6 "Thanks. Also, Alan and I would like to schedule a  
7 time to talk in detail with you and Phil regarding exactly how  
8 the funds will be moved in connection with the transaction  
9 (including the reason why Grant is getting such a low up-front  
10 cash payment, based on our understanding of the deal between  
11 them). Alan thinks it's important from a tax perspective to  
12 make sure that he really understands all of the pieces in the  
13 puzzle before we sign agreements, and I would like to learn  
14 this info from a corporate perspective as well. Does that  
15 sound OK? Alan and I are both generally free tomorrow, so we  
16 would work around your and Phil's schedule. Thanks, Angela."

17 Above that Mr. Collins' reply is: "Good. I will get  
18 us on Phil's schedule."

19 Is that right?

20 A. Yes.

21 MR. LEVY: OK, you can take that exhibit down.

22 Q. Now, you said -- let's put the Grant agreement back up.

23 You said you never saw this before the actual  
24 transaction, is that right?

25 A. I did not.



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Schoen - direct

1 Q. Do you recall any of your various advisors, any of Thomas  
2 H. Lee Partners' various advisors in this transaction, such as  
3 the law firms and the various other firms, ever mentioning this  
4 agreement to you prior to closing?

5 A. I think, as I said, we had a discussion about them telling  
6 me that we were not going to see it but that we were going to  
7 rely on reps and warranties instead.

8 Q. Have you since discovered that this document, Government  
9 Exhibit 1005.28, did in fact get assembled into that closing  
10 binder that you received weeks and months later and put on the  
11 shelf?

12 MR. BACH: Objection.

13 THE COURT: Sir.

14 MR. BACH: It assumes facts not in evidence.

15 THE COURT: What? That it was in effect then? What?

16 MR. BACH: The end of the question, Judge.

17 THE COURT: Mr. Levy.

18 MR. LEVY: I can re-ask the series of questions that  
19 led up to that question.

20 THE COURT: Go ahead. Do it the long way.

21 BY MR. LEVY:

22 Q. When you got the binder, the closing binder, what did you  
23 say you did with it?

24 A. Put it on a shelf.

25 MR. LEVY: Is that the end of the question that

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1 Mr. Bach was objecting to?

2 THE COURT: I thought it was when, when did you get  
3 it.

4 MR. LEVY: Oh.

5 Q. When do you recall getting the closing binder?

6 A. I don't even recall getting it. It was delivered to our  
7 offices and an administrative staff person put it on a shelf.

8 Q. Have you since discovered that this document was somehow  
9 included in that closing binder that was delivered to your  
10 offices and that an administrative assistant put on a shelf?

11 MR. BACH: Objection to "somehow."

12 MR. LEVY: I can remove the word "somehow" from the  
13 question.

14 THE COURT: Go ahead.

15 Q. The same question removing the word "somehow."

16 A. Can you repeat the question, please?

17 Q. Certainly. Have you since discovered that this document  
18 was included in the closing binder that was delivered to your  
19 offices and filed by an administrative assistant on a shelf?

20 A. I learned that when the U.S. -- when the representative  
21 from the U.S. Attorney's Office showed it to me.

22 Q. Since Refco's bankruptcy, have you investigated how this  
23 document managed to make it into the closing binder without  
24 your having seen it or found out about it?

25 A. We did investigate that, yes.

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1 Q. Have you been able to figure out how this document made it  
2 into the closing binder?

3 MR. BACH: Objection. Hearsay.

4 MR. LEVY: If the answer to it is not going to involve  
5 any assertion whatsoever about what he was told.

6 THE COURT: OK.

7 Q. Have you been able to figure out how this document made it  
8 into the closing binder without you knowing about it?

9 A. We have not. We have no idea.

10 Q. You're positive that you never saw it?

11 A. I'm certain.

12 Q. Again, why are you positive that you never saw this  
13 document during the course of the transaction?

14 A. I'm certain because if I had seen it, as I said, it would  
15 have shocked me and I think it would have shocked my team. And  
16 I feel confident it would have blown the deal, but at a minimum  
17 it would have led to an awful lot of discussion about what we  
18 didn't understand about the transaction.

19 Q. All right. Now, focusing on the time of the closing. And  
20 we can take this exhibit down.

21 Focusing now on the time of the closing, August 5th,  
22 prior to actually closing on this transaction to invest in  
23 Refco on August 5, 2004, were you ever told at any point prior  
24 to that that Refco was owed more than \$1 billion in related  
25 party debt by RGHI?

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1 A. I was not.

2 Q. If you had been told that, would it have mattered to you?

3 A. Yes.

4 Q. Why?

5 A. I can go down the same list of reasons: All the way from a  
6 complete different understanding of the situation of the  
7 transaction than the one that I had. It would have clearly  
8 meant that I had been directly lied to on something very  
9 substantial in the transaction. And it also would have raised  
10 all kinds of questions about what Refco's historical financial  
11 performance actually had been, whether it had been profitable,  
12 what the genesis was of this loan.

13 Q. Prior to closing on this transaction in August of 2004,  
14 were you ever told at any point that Refco suffered hundreds of  
15 millions of dollars in customer losses since 1997?

16 A. No.

17 Q. Did Refco's financial statements reflect that Refco had  
18 suffered hundreds of millions in customer losses since 1997?

19 A. No.

20 Q. If you had been told that, would that have mattered to you?

21 A. Yes. Very much.

22 Q. Why?

23 A. The same set of reasons. But the most important is --  
24 actually, all of them are important. Being lied to is  
25 important. Everything here is important.

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1 But, fundamentally, if this company which we believed  
2 had performed so well based on the historical financials we had  
3 been shown in fact historically had lost very large sums of  
4 money on a regular basis, we would have had a very different  
5 view of the business and certainly no interest in investing in  
6 it.

7 Q. Prior to August 5, 2004, when you actually closed on this  
8 transaction, at any point prior to that did anyone tell you  
9 that Refco had entered into an agreement called a Proceeds  
10 Participation Agreement pursuant to which a BAWAG-related  
11 company had invested more than \$400 million in exchange for  
12 receiving a share of the proceeds from the sale of Refco?

13 A. No.

14 Q. If you had been told about that type of arrangement, would  
15 that have mattered to you?

16 A. Yes.

17 Q. Why would that type of arrangement have mattered to you?

18 A. For the same set of reasons. We would have had very  
19 serious questions about the historical financial performance of  
20 the company and why it needed an infusion of \$400 million, what  
21 had happened to that \$400 million.

22 Again, we would have been -- it would have been a very  
23 different set of circumstances in terms of ownership and the  
24 right to proceeds from the story that we had been told. And in  
25 addition to that, we also had, I believe, in those agreements

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1 an approval right on the part of the BAWAG entity, and so we  
2 thought we were signing a binding contract and didn't need  
3 additional consents from another party and there was someone  
4 else who still had a right to approve. All of those things  
5 would have mattered.

6 Q. As long as we are getting to consent, at no point prior to  
7 August 5, 2004 were you told that there was another  
8 BAWAG-related entity that needed to consent to this  
9 transaction?

10 A. That's correct.

11 Q. And you touched on this at the tail end of your last  
12 answer, but why does that matter? Why would it have mattered  
13 to you that this other entity needed to consent to your  
14 transaction?

15 A. When you sign a binding contract, you believe that you are  
16 acquiring certain rights as well as taking on certain  
17 obligations. The rights you believe you are acquiring or  
18 contracting for when you sign a contract are the rights to  
19 proceed with the transaction. And if in fact there was another  
20 approval that is required and we were unaware of it, then we  
21 actually had not acquired the rights in exchange for the  
22 burdens or obligations that we were taking on; we had not  
23 acquired the rights that we felt we had to actually invest in  
24 the company.

25 Q. Are there times when Thomas H. Lee Partners invests in

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1 companies when there is some consents out there required by  
2 some third party that hasn't been obtained yet?

3 A. Yes.

4 Q. Can you give me an example of when that might come up?

5 A. An example could be if we were buying a company that was  
6 currently publicly traded, even if you contracted with the  
7 company and its representatives to purchase it, that is almost  
8 always then subject to a shareholder vote and so there are  
9 consents. But you are making a judgment when you sign that  
10 contract about the likelihood of success about what leverage  
11 you have.

12 So it is information. It doesn't automatically mean,  
13 in terms of consent approval, that you wouldn't have proceeded,  
14 but we had never spoken to BAWAG once in our lives. And so if  
15 there was a consent from someone that we didn't know about and  
16 we didn't know what their point of view would be on it, to take  
17 on all of the work, incur all the expense, dedicate all the  
18 time that we did to push forward to a closing not knowing about  
19 the requirement of that consent, that's the problem.

20 Q. Are there sometimes provisions are put in place to make the  
21 buyer whole if the consent ultimately isn't granted?

22 A. Yes. In a public-company transaction there are sometimes  
23 what are called reverse breakup fees where some of the buyers'  
24 costs are covered if the seller -- in that case, a public  
25 company, so the public shareholders don't approve the

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1 transaction. There are various mechanisms that can be put in  
2 place to protect the buyer.

3 Q. So there are things that are done if you know there is a  
4 consent that is needed?

5 A. Sometimes.

6 Q. At any point prior to closing on this transaction in August  
7 of 2004, did anyone tell you that that \$500 million in  
8 supposedly excess cash didn't actually exist?

9 A. No.

10 Q. At any point prior to closing on this transaction, did  
11 anyone tell you that the \$500 million in supposedly excess cash  
12 was actually borrowed money that had been put into a segregated  
13 account by Refco?

14 A. No.

15 Q. If you had known that, that there was no excess cash and  
16 that in fact what was put in the segregated account was just  
17 borrowed money, would that have mattered?

18 A. Yes.

19 Q. Why?

20 A. That also would have blown the deal. The litany is  
21 similar. It would have been that we would have been lied to  
22 quite specifically on something very substantial in the  
23 transaction. It would have raised serious questions about the  
24 historical performance of the company, which had been described  
25 and shown to us as having generated that excess cash over the



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1 previous number of years. And so our understanding of the  
2 business would have been radically different, in addition to no  
3 longer having any trust in the people that we were dealing  
4 with.

5 Q. All right. Let's switch subjects to what happened after  
6 the closing.

7 After the closing, how much of Refco did Thomas H. Lee  
8 Partners own?

9 A. We and our affiliates owned 57 percent of the company.

10 Q. Did you personally take on any role at Refco?

11 A. I did.

12 Q. What role?

13 A. I joined the board of directors of Refco.

14 Q. What is a board of directors?

15 A. The board of directors are representatives of the  
16 shareholders who oversee the management of the company. They  
17 don't run the company, but the management reports to the board  
18 of directors as the representatives of the shareholders.

19 Q. Did either you or anybody else at Thomas H. Lee Partners  
20 take on any role in the day-to-day operations of Refco?

21 A. No.

22 Q. Was anybody from Thomas H. Lee Partners put in a managerial  
23 position at Refco?

24 A. No.

25 Q. Did Phillip Bennett stay on as CEO?

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1 A. He did.

2 Q. Did Santo Maggio stay on in his role as the senior Refco  
3 executive?

4 A. Yes.

5 Q. Did Robert Trosten stay on as Chief Financial Officer?

6 A. He did not.

7 Q. Why not?

8 A. We had come to the conclusion during the course our  
9 diligence that the complexity of the business, the scale of the  
10 business, and the hopeful path to ultimately have it become a  
11 public company, a public stock company, were skill sets that  
12 were really beyond his capabilities and that we needed an  
13 upgrade or a stronger, more experienced chief financial  
14 officer. We informed Mr. Bennett of that view. He actually  
15 agreed with us, or told us he agreed with us, anything. So the  
16 intention was that after we completed the transaction, that we  
17 would proceed to search for a new Chief Financial Officer.

18 Q. And after the transaction, did you in fact search for a new  
19 chief financial officer?

20 A. We did.

21 Q. Do you remember how long that took?

22 A. I believe that we hired a new chief financial officer in  
23 either December or January.

24 Q. Do you remember the new -- I'm sorry. December of 2004?

25 A. '4 or January of 2005. I'm sorry.

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1 Q. And who did you hire?

2 A. His name is Gerald Scherer, S-c-h-e-r-e-r.

3 Q. Did Refco continue to use Joseph Collins and Mayer Brown  
4 for some of its legal work?

5 A. Yes.

6 Q. Did Refco also use Weil, Gotshal, who I think you said had  
7 historically been Thomas H. Lee Partners' attorneys for some of  
8 Refco's legal work?

9 A. Yes, we used both.

10 Q. Do you recall earlier this morning you looked at a  
11 confidential offering memorandum relating to the sale of notes  
12 to investors?

13 A. Yes.

14 Q. At the time that those notes were issued, were they  
15 registered?

16 A. They were not.

17 Q. Did there come a point when those notes were registered?

18 A. Yes. By their terms on the basis in which they were sold,  
19 we were obligated to register them within six months of the  
20 closing. And "register" means to file with the Securities and  
21 Exchange Commission and have them become publicly traded.

22 Q. What does that mean, have them become publicly traded?

23 What is benefit of registering notes with the Securities and  
24 Exchange Commission?

25 A. When securities are publicly registered and publicly

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1 traded, they are freely tradable. It becomes -- they are more  
2 liquid, and so the holders of those securities can either keep  
3 them or sell them to other buyers over an exchange on a running  
4 basis.

5 Q. If they are not registered, what does that prevent them  
6 from -- the owners of those notes from doing?

7 A. There are various restrictions on their ability to sell  
8 them.

9 Q. What is the process for registering those notes?

10 A. You form -- you draft and file a registration statement  
11 with the Securities and Exchange Commission, providing them  
12 information -- first, the SEC but ultimately when it passes or  
13 blesses it, ultimately you put the information out into the  
14 public domain about the company. So that when the securities  
15 trade publicly, other public investors who might buy them in  
16 the future and those who hold them will have again all the  
17 information that they need about the company.

18 Q. Does this registration statement that gets filed, how would  
19 you get ahold of it if you were a regular investor?

20 A. It is publicly available.

21 Q. If you know, can you pull it down from the Internet?

22 A. I think there are a lot of ways to get them these days but  
23 I'm not sure.

24 Q. OK. Do you have in front of you Government Exhibit 5007?

25 A. Yes.

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1 Q. Is that the registration statement that was filed to  
2 register the notes involved in this transaction?

3 A. Yes.

4 MR. LEVY: your Honor the government offers  
5 Government Exhibit 5007.

6 MR. BACH: No objection.

7 THE COURT: Received.

8 (Government's Exhibit 5007 received in evidence)

9 MR. LEVY: All right. Let me see how much -- that  
10 seems about right.

11 Thank you.

12 Q. This says "Securities and Exchange Commission," and it is  
13 entitled "Form S-4," is that right?

14 A. Yes.

15 (Continued on next page)

16  
17  
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24  
25

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Schoen - direct

1 BY MR. LEVY:

2 Q. And below that it says Registration Statement Under the  
3 Securities Act of 1933, right?

4 A. That's correct.

5 Q. And then below that it says, Refco Group Limited, LLC;  
6 Refco Finance, Inc. This is the document that was -- that was  
7 filed to register the notes?

8 A. Yes.

9 Q. And could you please turn to Page 6.

10 MR. LEVY: And if we could just expand the top third  
11 down through the title. That's good.

12 Q. This says Prospectus in the left corner; is that right?

13 A. Yes.

14 Q. And is that consistent with what you were saying that this  
15 is, a disclosure document for potential investors in these  
16 notes; is that right?

17 A. That's correct.

18 Q. How did this disclosure document that was filed with the  
19 SEC compare to the offering circular that we looked at earlier  
20 this morning when the notes were originally sold? How did the  
21 information in the two documents compare?

22 A. The information is very similar. This document has been  
23 reviewed by the SEC, and so there may be places where, and  
24 there normally are places where the SEC asks for additional  
25 information or additional disclosure to make sure the public

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Schoen - direct

1 investors get all the information that they need.

2 Q. Could you turn to Page F1 of this registration statement?

3 A. Okay.

4 Q. Were Refco's financial statements attached to this  
5 registration statement?

6 A. They were.

7 Q. Why?

8 A. Same reason as in the offering circular. This is providing  
9 potential investors, both current and in the future, with all  
10 the information that they need about the company so that they  
11 can evaluate their investment interest.

12 Q. Did this S-4 registration statement inform potential  
13 investors in the notes that prior to Thomas H. Lee Partners'  
14 investment, Refco had been owed more than \$1 billion in  
15 related-party debt by RGHI?

16 A. It did not.

17 Q. Did this S-4 registration statement inform potential  
18 investors that even after the transaction, after this was being  
19 filed, Refco was still owed hundreds of millions of dollars in  
20 related-party debt by RGHI?

21 A. No.

22 Q. Were you aware of either of those two things at the time  
23 that this registration statement was filed with the SEC?

24 A. I was not.

25 Q. Did you realize that anything was being hidden or omitted

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Schoen - direct

1 in this document?

2 A. No. I signed this document as a member of the board of  
3 directors, and I would never have done that if I knew that  
4 anything was being hidden.

5 Q. All right. You can put this document to the side.

6 Did there come a time when Refco engaged in something  
7 called an initial public offering?

8 A. Yes.

9 Q. Is that sometimes called an IPO?

10 A. Yes.

11 Q. Can you please explain what an initial public offering or  
12 an IPO is?

13 A. An IPO is a registration of the stock of the company and a  
14 sale of some of the stock, and following an IPO, the stock of  
15 the company would be publicly registered and freely tradeable.

16 Q. When you say publicly registered and freely tradeable, at  
17 that point, who can buy Refco stock?

18 A. Anyone.

19 Q. When did Refco hold its initial public offering?

20 A. August of 2005.

21 Q. When a company holds an initial public offering, or an IPO,  
22 is there a document that needs to with filed first with the  
23 Securities & Exchange Commission?

24 A. Yes. The process is the same as the one I described with  
25 the bonds. There's a registration statement and an offering



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Schoen - direct

1 prospectus that gets filed with the SEC and viewed and is used  
2 as the basis for the sale of the stock.

3 Q. Do you have in front of you what's been marked as  
4 Government Exhibit 5006?

5 A. Yes.

6 Q. Is that the registration statement that you were talking  
7 about that got filed with Refco's IPO?

8 A. Yes.

9 MR. LEVY: Your Honor, the government offers  
10 Government Exhibit 5006?

11 MR. BACH: No objection.

12 THE COURT: Received.

13 (Government's Exhibit 5006 received in evidence)

14 Q. Let's just look at the top half of this cover page. Again,  
15 it says Securities and Exchange Commission. It's form S-1,  
16 Registration Statement Under the Securities Act of 1933, and  
17 below that it says, Refco, Inc. Why Refco, Inc.? I think  
18 we've been seeing Refco Group Limited in reference to this  
19 company previously?

20 A. The company converted from an LLC, a limited liability  
21 company, to a C-Corp. or taxable corporation.

22 Q. Same company, though?

23 A. Yes, it's just a change in corporate form.

24 Q. Could you please go two pages further into the document.  
25 And this refers to \$25 million in shares of common stock of

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Schoen - direct

1 Refco, Inc.; is that right?

2 A. No, that's not correct. It's 25 million shares, not  
3 \$25 million.

4 Q. I'm sorry. I misspoke. 25 million shares. Is that the  
5 approximate number that was actually sold to the public?

6 A. Yes.

7 Q. Do you remember whether that number changed at all?

8 A. I don't believe it did.

9 Q. And the date on this document is August 8th of 2005; is  
10 that right?

11 A. Yes.

12 Q. Was this document prepared and reviewed by Refco's lawyers  
13 before it was filed with the SEC?

14 A. It was.

15 Q. Do you have in front of you what's been marked for  
16 identification as Government Exhibit 359?

17 A. I do.

18 MR. LEVY: Your Honor, the government offers  
19 Government Exhibit 359, subject to the stipulation concerning  
20 the authenticity of certain records.

21 THE COURT: Received.

22 (Government's Exhibit 359 received in evidence)

23 MR. LEVY: Okay. Do we have 359 available to put up  
24 on the screen? And if we could, Mr. Smith, if you could expand  
25 the top half, I think that would be great.

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Schoen - direct

1 Q. This says, again, form S-1, Registration Statement Under  
2 the Securities Act of 1933, and there's handwriting on this; is  
3 that right?

4 A. Yes.

5 Q. Up top there are initials JPC, and then it says  
6 October 28th of 2004; is that right?

7 A. Yes.

8 Q. And below that says "only changed pages are attached"; is  
9 that right?

10 A. That's correct.

11 MR. LEVY: And, Mr. Smith, if you could pull back, and  
12 we could just very slowly scroll through this document.

13 Q. And there are handwritten notes on the remaining pages of  
14 this document; is that right?

15 A. That's correct.

16 MR. LEVY: Okay. Thank you. We can take that down  
17 and put that to the side.

18 Q. And can we put back up on the screen Government  
19 Exhibit 5006, the form S-1 that we were looking at a moment  
20 ago. Could you please turn to Page F1 of this document?

21 A. Okay.

22 Q. Fair to say this is a relatively thick document; is that  
23 right?

24 A. Yes, it is.

25 Q. More than a hundred pages, at least?

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Schoen - direct

1 A. More than a hundred pages.

2 Q. Were Refco's -- I'll wait a second until you get there.

3 A. Okay.

4 Q. Were Refco's financial statements attached to this  
5 registration statement?

6 A. Yes.

7 Q. Did this S-1 registration statement inform potential  
8 purchasers of Refco stock that prior to Thomas H. Lee Partners'  
9 transaction, Refco had been owed more than \$1 billion by RGHI?

10 A. It did not.

11 Q. Did it inform potential purchasers of Refco's stock that  
12 even as this was being filed, Refco was owed hundreds of  
13 millions of dollars in related-party debt from RGHI?

14 A. No.

15 Q. Were you aware, at the point that this was filed in August  
16 of 2005, that either of those things were true?

17 A. No.

18 Q. Did you sign this document?

19 A. I did.

20 Q. Would you have signed it if you had known that there was  
21 anything being hidden from potential investors?

22 A. Absolutely not.

23 Q. All right. We can put that to the side.

24 When did Refco actually issue its shares of stock to  
25 the public? When was the IPO?

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Schoen - direct

1 A. It was in August of 2005. I don't recall the exact date.

2 I think August 11th, but I'm not certain.

3 Q. And you said it was 25 million shares that were sold to the  
4 public?

5 A. That's correct.

6 Q. What was the price per share on that offering?

7 A. \$22 per share.

8 Q. Did Thomas H. Lee sell some of its own shares in Refco on  
9 that day?

10 A. We did.

11 Q. How much did Thomas H. Lee Partners take in, in total, from  
12 the IPO?

13 A. About \$200 million.

14 Q. Did Thomas H. Lee Partners sell all of its shares in Refco  
15 on that day?

16 A. No.

17 Q. What percentage of its shares did Thomas H. Lee Partners  
18 sell in the IPO?

19 A. We sold more than 20 percent, and kept more than 80 percent  
20 of our stock.

21 Q. Why did you keep more than 80 percent of your Refco stock  
22 at that time?

23 A. Two reasons. One, the most important reason, is that we  
24 believed that the company had a very bright future, and that  
25 the shares would continue to appreciate. And we hoped to sell

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Schoen - direct

1 our other shares in the years to come at higher prices.

2 The other is that typically an IPO's new investors  
3 don't like to see the inside investors selling their entire  
4 position. It's the same way that I mentioned earlier we  
5 wouldn't have felt comfortable if Mr. Bennett would have sold  
6 almost all of his position and only keeping a small position.

7 But the most important reason was we just believed  
8 there was a long-term opportunity for stock appreciation and  
9 value of the company.

10 Q. Did Refco's stock, in fact, go up after that first day?

11 A. It did.

12 Q. What was the highest share price that Refco stock ever got  
13 to?

14 A. The stock traded publicly for a couple of months, and the  
15 highest price was, I think, \$31 a share.

16 Q. What was Thomas H. Lee Partners' remaining stock, that  
17 80 percent, more than 80 percent that Thomas H. Lee Partners  
18 kept, what was that worth at the peak?

19 A. We kept something over 50 million shares, something over  
20 \$1.5 billion for our remaining position.

21 Q. Did there come a time when Refco's stock price dropped  
22 significantly?

23 A. There did.

24 Q. What month was that?

25 A. That was in October of 2005.

CABPCOL2

Schoen - direct

1 Q. How many months -- Well, when we say significantly, what  
2 did it drop to in October of 2005?

3 A. To zero.

4 Q. How many months was that after the initial public offering?

5 A. Just a couple of months since the public offering.

6 Q. Was that drop in response to Refco's announcement of the  
7 discovery of related-party debt owed to Refco?

8 A. Yes.

9 Q. When and how did you first learn of this issue?

10 A. I first learned of it through a phone call I received on  
11 the evening of October 4th, 2005. I remember the date well  
12 because it was my older son's birthday, and I'd taken him down  
13 the street to get an ice cream cone. And I got a call from the  
14 head of the audit committee of the board of directors informing  
15 me of a major problem.

16 Q. Could I stop you for a moment there, and could you explain  
17 to the jury what an audit committee of a board of directors is?

18 A. Yes. So I referenced earlier that the board of director is  
19 a group of individuals tasked with representing the  
20 shareholders and having management report to them. It included  
21 both insiders, people from our company who were shareholders,  
22 management in the form of Mr. Bennett, and also, we bring in  
23 outside or independent directors who have no financial  
24 relationship to us or the company and who can provide  
25 additional oversight for shareholders.

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Schoen - direct

1           And in this case, we had three independent directors,  
2           and they were also placed on an audit committee. The board of  
3           directors has committees that do certain tasks. The audit  
4           committee's job is to work with the outside auditors, the  
5           certified public auditors who -- who review the financial  
6           statements of the company and issue the audits that we talked  
7           about yesterday.

8           They work with the auditors and the management of the  
9           company to make sure that the financial statements are being  
10          properly prepared, that the audits are thorough, and that the  
11          disclosure that the company is putting out into the public  
12          domain is accurate.

13       Q. And so on October 4th, I think you said?

14       A. Yes.

15       Q. You were out getting an ice cream cone with your son. You  
16       got a call from the head of the audit committee?

17       A. Yes.

18       Q. What did he tell you?

19       A. He told me that he had been called by the chief financial  
20       officer, Gerald Sherer that we had hired earlier that year, and  
21       Mr. Sherer told him that he had discovered that the company  
22       still was owed \$430 million by RGHI; that there was a large  
23       related-party debt outstanding.

24       Q. What did you do upon being given this news?

25       A. After I caught my breath, I hung up the phone, called our



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Schoen - direct

1 counsel to get advice on how to proceed. I reached out to  
2 Mr. Sherer, did not -- I think I spoke to him briefly, and I  
3 reached out to Mr. Bennett.

4 Q. Where did Mr. Bennett tell you he was at the time?

5 A. I didn't get through to him. He called me back. He was in  
6 Asia, I think in Japan, but I think it was Asia. It was either  
7 Japan or China.

8 Q. And what happened on that conversation with Mr. Bennett  
9 that night?

10 A. He said a few things. First, he said it was simply a  
11 matter of disclosure, and that he could explain everything.  
12 Second, he said that he was in -- I'm sorry, I can't recall now  
13 if it was Japan or China, but I think it was Japan, but he had  
14 meetings. It was the following morning in Japan or China.  
15 That he had meetings that day, and he would get on a plane as  
16 soon as those meetings were over, and fly back immediately to  
17 the U.S. And we agreed that we would meet in his offices on  
18 Thursday morning because it would take him the day on Wednesday  
19 to get back.

20 Q. So this conversation that you had was Tuesday, October 4th?

21 A. Tuesday night, that's right.

22 Q. So in between that conversation and this planned meeting on  
23 Thursday, what did you do on Wednesday?

24 A. We spent a lot of time with our counsel. We informed the  
25 rest of the board of directors, and we tried to learn as much

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Schoen - direct

1 as we could, as well, by talking to the CFO about what he had  
2 discovered.

3 We were trying to get an understanding of how this  
4 could have happened, what it was, what we knew about where it  
5 came from. We didn't know much. Why we hadn't known about it,  
6 so forth. And to plan our course of action so we can conduct  
7 ourselves in the right way in the interests of the stakeholders  
8 in the company.

9 Q. Did you, in fact, have that meeting with Mr. Bennett on  
10 Thursday, October 6th, 2005?

11 A. We did, Thursday morning in his office in New York.

12 Q. Who was at that meeting?

13 A. Thomas H. Lee, whose name is on the door, was on the board  
14 of directors, as well, of the company. David Harkins, who was  
15 president of Thomas H. Lee Partners, myself, and Jim Westra,  
16 who was our chief outside counsel from Weil Gotshal.

17 Q. What happened in that meeting?

18 A. We asked Mr. Bennett to explain to us what this was, what  
19 the origin of it was, why we were not aware of it, and he  
20 attempted to explain it.

21 Q. What do you mean by "he attempted to explain it"?

22 A. Well, nothing that he said was very persuasive. It was --  
23 We knew that there wasn't going to be an explanation that made  
24 any sense, and so he spent an hour trying to convince us that  
25 everything was going to be okay. And we told him that we

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1 wanted him to come and meet with the board of directors later  
2 that afternoon and then we left.

3 Q. What happened next?

4 A. We were, at this point, if you can imagine pressing your  
5 foot to the accelerator. We were on 24/7 trying to work with  
6 lawyers, trying to work with the board, trying to understand  
7 how to move as quickly as possible to get all the information  
8 out and to act appropriately as a consequence.

9 But the next important event was a meeting where  
10 Mr. Bennett came to the board of directors later that afternoon  
11 at the offices of Weil Gotshal, and he tried to provide his  
12 explanation to the board of directors.

13 Q. Do you remember what he said?

14 A. I don't remember the details. I do know that he  
15 specifically said that he thought it was simply a matter of  
16 disclosure, and that it could be fixed with disclosure. He  
17 also said that he was prepared to undertake steps to try to  
18 repay it on a very rapid basis.

19 Q. What was the board's reaction to that?

20 A. The board told him two things. One, that he was not to go  
21 back to his office, and we actually took some steps to secure  
22 his office. And we told him, and we encouraged him, that it  
23 would be wise for him, if he could, to find a way to repay the  
24 receivable. I think we also suggested to him, although it's  
25 not our position to provide advice, but we suggested to him

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Schoen - direct

1 that he should retain counsel.

2 Q. Did Mr. Bennett say where he was going to get the money to  
3 repay this loan?

4 A. I don't recall if he said at that meeting, where he was  
5 going to get the money, I don't think so.

6 Q. Do you remember him telling you subsequently where he was  
7 going to get the money?

8 A. I believe he did.

9 Q. What did he say?

10 A. We had a subsequent meeting with him on Saturday. Do you  
11 want me to jump to that or --

12 Q. Just on the subject of what he said about where he would  
13 get the money to repay the loan.

14 A. I think he told us on Saturday that he believed he could  
15 arrange for the repayment of the loan by Monday morning, and  
16 that he was working with BAWAG to get a loan to do that.

17 Q. All right. Now, after the board met with Mr. Bennett, did  
18 the board meet with anybody else in Refco management?

19 A. I think, at this point, the audit committee both had --  
20 excuse me. The board had its outside counsel, Weil Gotshal.  
21 We also had -- the audit committee had retained its own  
22 counsel. We had meetings, I don't recall if it was Thursday,  
23 but I think it might have been Friday, with Mr. Maggio, who, as  
24 I mentioned earlier, was one of the top two or three executives  
25 in the company. And he came and met with the board.

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Schoen - direct

1 Q. What did Mr. Maggio tell the board?

2 A. He essentially threw his hands up in the air and said, I  
3 did it; it's all a big fraud. I admit it. The whole thing is  
4 a house of cards, and then he said -- he threw himself on the  
5 mercy of the board. He said, Take me down, save Phil. The  
6 company needs Phil Bennett in order to survive, and so he kind  
7 of -- he threw himself in front of the bus. He said, I'll take  
8 the hit, save Phil.

9 Q. Did the board accept that offer from Mr. Maggio?

10 A. We did not.

11 Q. Why not?

12 A. Because it was apparent, at that point, that both of them  
13 were engaged in a large crime.

14 Q. What did the board do with respect to Mr. Bennett's and  
15 Mr. Maggio's positions as active managers of Refco?

16 A. As of Saturday, after meeting with other senior managers of  
17 the company to inform them of our plans, as of Saturday, we  
18 met. We had Mr. Bennett come with counsel to meet with the  
19 board, and we informed him that we were putting him and  
20 Mr. Maggio on leave. So we were relieving them of their duties  
21 and installing two other executives as the CEO, chief executive  
22 officer, and executive of Refco.

23 Q. Over the weekend, did you participate in plans to disclose  
24 to the public what had been discovered?

25 A. We did. We were working around the clock with plans to do

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Schoen - direct

1 a handful of things. One, to inform the key managers of the  
2 company around the globe about what had happened and what we  
3 were doing about it, about the change in leadership, about what  
4 was likely to come early next week when we made our public  
5 disclosure.

6 We had work we had to do to reach out to regulators,  
7 including some of the exchanges on which the company did  
8 business. We had to reach out to the Securities & Exchange  
9 Commission. The company had now registered bonds and stock  
10 registered through the SEC, and we reached out to the New York  
11 Stock Exchange.

12 We also spent the weekend drafting a disclosure, now  
13 that we'd been able to assemble a fuller understanding of what  
14 had happened, so that we could provide the public with  
15 information as to what happened as fully as we possibly could.

16 Q. When you say disclosure, is it commonly referred to as a  
17 press release?

18 A. Yes. It was a press release that was issued just before  
19 the market opened on Monday morning, the 10th.

20 Q. Was an individual named Dennis Klejna involved in those  
21 conversations over the weekend about what to do next?

22 A. Yes.

23 Q. Who is Dennis Klejna?

24 A. He was Refco's inside counsel; so in order -- he was a  
25 full-time employee of Refco and was Refco's top lawyer, inside

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Schoen - direct

1 the company.

2 Q. Okay. It was he their general counsel?

3 A. General counsel.

4 Q. Have you seen an e-mail between Joseph Collins and Dennis  
5 Klejna that was sent over that weekend?

6 A. I have.

7 MR. LEVY: Your Honor, pursuant to stipulation  
8 concerning the authenticity of certain documents, the  
9 government offers Government Exhibit 840.

10 THE COURT: Received.

11 (Government's Exhibit 840 received in evidence)

12 MR. LEVY: All right. And I think we can bring up  
13 from original message -- not the very top, but where it says  
14 original message. We'll just leave the internal e-mail in this  
15 chain. Yeah, that's good.

16 Q. All right. This is an e-mail chain that you have in front  
17 of you; is that right?

18 A. Yes.

19 Q. And we're reading one of the messages in that chain; is  
20 that right?

21 A. That's correct.

22 Q. And it says it is from Joseph Collins to Dennis Klejna,  
23 Sunday, October 9th of 2005; is that right?

24 A. That's correct.

25 Q. And is that that weekend that we were just discussing just

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Schoen - direct

1 before Refco was about to make its public announcement?

2 A. Yes, that's correct.

3 Q. And it says, "Subject: Script for communications with  
4 regulators and SROs"; is that right?

5 A. Yes.

6 Q. What's an SRO?

7 A. I'm sorry, I don't recall.

8 Q. And it said, "Dennis, Set forth below is a script which can  
9 be used in speaking with the relevant regulators and SROs on  
10 Monday morning." Monday morning was when you said you had  
11 planned to make all of these various disclosures?

12 A. Yes.

13 Q. "Obviously, this is a draft and subject to further revision  
14 based upon the results of your further investigation and  
15 discussions today."

16 And if we jump to No. 4, it says -- this is  
17 Mr. Collins' writing, "There was no material impact on Refco's  
18 financial statements. While the filing with the SEC scheduled  
19 for later this week will be delayed, this is a matter of  
20 caution to allow the completion of the review. No financial  
21 report filing at a regulated sub will be delayed."

22 No. 5 says, "There was no impact whatsoever on the  
23 financial statements for businesses of Refco's regulated  
24 subsidiaries." All right. We can put that to the side.

25 Did Refco issue a press release the next day?



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1 A. We did.

2 Q. Did you participate in drafting it?

3 A. Yes.

4 Q. Did you tell the public that there was no material impact  
5 on Refco's financial statements?

6 A. We did not.

7 Q. You said something different?

8 A. Yes, we said something different.

9 Q. Do you have in front of you the government exhibit that's  
10 been marked for identification as Government 1012?

11 A. Yes.

12 Q. Is that the press release that you issued on Monday  
13 morning?

14 A. It is.

15 MR. LEVY: Your Honor, the government offers  
16 Government Exhibit 1012.

17 THE COURT: 1012, Mr. Bach? Press release.

18 MR. BACH: No objection.

19 THE COURT: Received.

20 (Government's Exhibit 1012 received in evidence)

21 Q. All right. This is the press release that was issued by  
22 Refco on Monday morning?

23 A. Yes.

24 MR. LEVY: And can we actually start a little bit  
25 higher up there from what we're expanding, meaning can we

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1 capture the title as well in those first two paragraphs?

2 Q. And could you please read to the jury what Refco actually  
3 told the public in its press release on Monday morning?

4 A. Yes. Refco -- The title is "Refco announces undisclosed  
5 affiliate trans. New York, October 10th, PR Newswire First  
6 Call. Refco, Inc. today announced that it had discovered,  
7 through an internal review, a receivable owed to the company by  
8 an entity controlled by Phillip R. Bennett, chief executive  
9 officer and chairman of the board of directors, in the amount  
10 of approximately \$430 million. Mr. Bennett today repaid the  
11 receivable in cash, including all accrued interest.

12 "Based on the results of the review to date, the  
13 company believes that the receivable was the result of the  
14 assumption by an entity controlled by Mr. Bennett of certain  
15 historical obligations owed by unrelated third parties to the  
16 company, which may have been uncollectible. The company  
17 believes that all customers' funds on deposit are unaffected by  
18 these activities. Independent counsel and forensic auditors  
19 have been retained to assist the audit committee in an  
20 investigation of these matters.

21 "This receivable from the entity controlled by  
22 Mr. Bennett was reflected on the company's prior period  
23 financials, as well as on the company's May 31, 2005, balance  
24 sheet. The receivable was not shown as a related-party  
25 transaction in any such financials. For that reason, and after

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1 consultation by the audit committee with the company's  
2 independent accountants, the company determined on October 9th,  
3 2005, that its financial statements, as of, and for the periods  
4 ended, February 28th, 2002, February 28th, 2003, February 28th,  
5 2004, February 28th, 2005, and May 31, 2005, taken as a whole,  
6 for each of Refco, Inc., Refco Group Limited, LLC, and Refco  
7 Finance, Inc., should no longer be relied upon."

8 Q. So what you told the public was that the financial  
9 statements were potentially inaccurate and should not be relied  
10 on?

11 A. That's correct.

12 Q. All right. We can take that down. This was issued on  
13 Monday?

14 A. Yes, Monday morning.

15 Q. What happened to Refco's stock price when this press  
16 release was issued?

17 A. Over the course of the day Monday, the stock price dropped  
18 from \$31 a share to \$17 a share, and the company was inundated  
19 with phone calls from investors trying to understand what  
20 happened.

21 Q. What happened the next day, on Tuesday?

22 A. Tuesday morning, the New York Stock Exchange announced that  
23 it would not open the stock for trading; so that the  
24 shareholders could not buy and sell the stock of the company.  
25 There was a news commentator who went on CNN, I think, or CNBC,

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1 stated that he thought that the company was now in default on  
2 its debt covenants; so in default on its debt.

3 News came out that Mr. Bennett was arrested at his  
4 home, as a result of this, and the information flowing out into  
5 the marketplace, customers began asking for their money back in  
6 droves. We had what is often called a run on the bank. We  
7 think of the equivalent if you had a broker's account at  
8 Merrill Lynch and found out it was ripe with fraud, your first  
9 thought would be, I ought to get my money out of Merrill Lynch  
10 and put it somewhere else.

11 Well, the customers were calling like crazy, and we  
12 were paying them back their money as fast as we could. Over  
13 the course of the day Tuesday, the stock went almost all the  
14 way to zero.

15 Q. When you issued the press release, making this public  
16 disclosure, were you aware that this was a potential or even  
17 likely result?

18 A. We were aware that it was a very real possibility,  
19 potentially likely.

20 Q. What happened through the rest of the week?

21 A. We continued to be inundated with redemption requests,  
22 customers who wanted their money back. Through the course of  
23 the day Wednesday and by the close of the market on Wednesday,  
24 over the course of Tuesday and Wednesday, we had returned well  
25 in excess of a billion dollars of funds back to customers who

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Schoen - direct

1 requested it.

2 We concluded by the end of the afternoon Wednesday,  
3 after the market closed, that we had run out of money, that we  
4 had no more cash.

5 Q. And so what happened?

6 A. So we announced, and I don't recall today whether it was  
7 Wednesday after the market closed or whether it was Thursday  
8 morning, but I think we announced Thursday morning that we were  
9 no longer in a position to honor any customer redemption  
10 requests.

11 The stock, of course, was not trading. When I  
12 mentioned earlier that it went to zero on Tuesday, the New York  
13 Stock Exchange did open it for trading on Tuesday afternoon,  
14 and that's when it went from 17 to zero.

15 And what happened after Thursday was the company, with  
16 no more money, started preparing for bankruptcy filing, and I  
17 believe filed for bankruptcy the following Monday.

18 Q. What happened to the value of the Refco shares that were  
19 owned by Thomas H. Lee Partners and all of the shareholders out  
20 in the public?

21 A. It went to zero.

22 Q. What happened to the value of Thomas H. Lee's investment  
23 overall on this transaction? What kind of losses were  
24 suffered?

25 A. We invested about \$500 million originally. As I mentioned

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1 earlier today, we got about \$200 million back from the sale of  
2 a small portion of our shares in the IPO, in the public stock  
3 offering, and the rest of our shares were worthless. So we  
4 lost -- we never got back \$300 million of the 500 that we  
5 invested.

6 The other way I looked at it is before we announced  
7 the fraud and the stock was at 31, our remaining shares were  
8 worth a billion five. And if I take that into 200 million, our  
9 total value was a billion-seven, we wound up with just the 200  
10 million and lost a billion-five in value over the course of  
11 that week.

12 MR. LEVY: Your Honor, may I have a moment to consult  
13 with counsel?

14 THE COURT: Yes.

15 MR. LEVY: I have no further questions, your Honor.

16 THE COURT: Thank you. Shall we take a quick break,  
17 ladies and gentlemen? All righty. I know that some of you  
18 ladies and gentlemen wrote on your exhibits. We certainly want  
19 to keep whatever notes you want. Thankfully, we have prepared  
20 folders for you by juror number.

21 If you will put your exhibits into the folders, they  
22 will be kept for you. You can keep them at your chair, and  
23 we'll just pick them up every night and put them up on the desk  
24 so that they'll be retained for you. You don't have to worry  
25 about losing them, and you don't have to take them into the

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1 jury room with you. Please follow the same rules. Don't  
2 discuss the case among yourselves, and I look forward to seeing  
3 you shortly. Thank you for your attention.

4 THE DEPUTY CLERK: All rise. You can leave your  
5 exhibits on your chairs and take your folders out with you when  
6 you exit the jury room. Thank you, folks.

7 (Jury exits)

8 THE COURT: You may step down, sir.

9 (Witness temporarily excused)

10 THE COURT: Anything else on the record?

11 MR. LEVY: No, your Honor.

12 THE COURT: Okay. Off the record.

13 (Discussion held off the record)

14 (Recess taken)

15 (Jury enters) (Witness resumes the stand)

16 THE COURT: Ladies and gentlemen, I forgot to thank  
17 you this morning for being so prompt. It really helps us get  
18 rolling and get our work done. So thank you for your  
19 consideration. I'm sure it was the enticement of coffee and  
20 tea.

21 JUROR: Absolutely.

22 JUROR: It helped.

23 THE COURT: We try. Won't you be seated, ladies and  
24 gentlemen. We now proceed to the cross-examination of  
25 Mr. Schoen. Mr. Bach.

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Schoen - direct

1 MR. BACH: Thank you, your Honor.

2 CROSS-EXAMINATION

3 BY MR. BACH:

4 Q. Good morning, Mr. Schoen.

5 A. Good morning.

6 Q. Mr. Schoen, before the end of your direct examination, the  
7 prosecutor asked you about a press release that was made to the  
8 public on October 10th; do you remember that?

9 A. Yes.

10 Q. And in that press release, an announcement was made that  
11 events at Refco would have an impact on Refco's financial  
12 statements, correct?

13 A. Yes.

14 MR. BACH: And that press release, can we put it up on  
15 the board, please? Government Exhibit 1012.

16 Q. That press release, if we can refer to the language in the  
17 second paragraph, halfway down says that "The company  
18 determined on October 9th, 2005, that its financial statement,  
19 as of, and for the periods ended February 28, 2002,  
20 February 28, 2003, February 28, 2004, February --

21 THE COURT: Do you want it taken down? Slowly.

22 MR. BACH: I'm sorry, Judge.

23 Q. -- "February 28th, 2002, February 28th, 2003,  
24 February 28th, 2004, February 28, 2005, and May 31, 2005, taken  
25 as a whole, for each of the Refco, Inc., Refco Group Limited,



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Schoen - cross

1 LLC, and Refco Finance, Inc. should no longer be relied upon,"  
2 correct?

3 A. Yes.

4 Q. And that determination, according to the press release, was  
5 made the day before on Sunday, October 9th, correct?

6 A. Yes.

7 Q. And that determination was made at the board meeting on  
8 Sunday, October 9th, correct?

9 A. I don't recall. I believe so.

10 Q. Okay. And that board meeting was at 4:00 in the afternoon  
11 on Sunday on October 9th, correct?

12 A. I don't recall.

13 Q. Let me see if I can refresh your recollection.

14 MR. BACH: May I approach?

15 THE COURT: Yes, sir. You don't have to ask.

16 Q. Let me show you what's been marked for identification as  
17 Defense Exhibit 231 and ask you if that refreshes your  
18 recollection that the board meeting was at 4:00 on --

19 MR. SCHWARTZ: Could the Court ask Mr. Bach to speak  
20 up?

21 Q. And let me ask if that refreshes your recollection that the  
22 board meeting was at 4:00 on Sunday, October 9th?

23 MR. LEVY: Your Honor, if possible, could we could see  
24 a copy?

25 MR. BACH: I'll show Mr. Levy.

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Schoen - cross

1 A. That's what this says, yes.

2 THE COURT: Sir, counsel is not asking you to read the  
3 document. He's asking whether, after looking at the document,  
4 you say, ahh, yes, now, I remember it was at 4:00.

5 A. I have no recollection of the timing, other than reading  
6 this document.

7 Q. Okay. Do you recognize this document?

8 A. No.

9 Q. Is this the board minutes of --

10 MR. LEVY: Objection.

11 Q. -- of the board meeting?

12 MR. LEVY: He said he doesn't recognize the document.

13 THE COURT: Are you able to answer that question, sir?

14 A. I don't recognize the document.

15 Q. Before the board meeting on Sunday, October 9th, no  
16 determination had been made about whether the events at Refco  
17 would have an impact on its financial statements, correct?

18 A. I don't have any recollection of the timing.

19 Q. And can we look at Joe Collins' e-mail, Government Exhibit  
20 840? I need to ask the government to pull that up.

21 MR. BACH: And can you blow up the top of that  
22 document?

23 Q. Mr. Schoen, that's a document that the government showed  
24 you during your direct examination?

25 A. Yes.

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Schoen - cross

1 Q. An e-mail Joe Collins sent to Dennis Klejna?

2 A. That's correct.

3 Q. And the time on the e-mail is 2:00, 2:02, correct?

4 A. I see -- Am I looking in the wrong place? Oh. Oh, I see.

5 At the top, yes.

6 Q. Go down. You can see that Joe's e-mail to Dennis Klejna is  
7 at 1355; do you see that?

8 A. That's correct, that's 1:55 in the afternoon.

9 Q. That's right. That's shortly before 2:00?

10 A. Yes.

11 Q. And that was before 4:00 on Sunday October 9th, correct?

12 A. Yes.

13 Q. And, sir, you don't know what conversations Joe Collins was  
14 having with Mr. Klejna leading up to this e-mail, correct?

15 A. No, I don't.

16 Q. You don't know what guidance Mr. Klejna gave him, if any,  
17 about what to write in this e-mail, correct?

18 A. I don't.

19 Q. And Joe Collins says in this e-mail, if you look at the top  
20 paragraph, he says, "Obviously, this is a draft"?

21 A. Yes.

22 Q. And "subject to further revision based upon the results of  
23 your further investigation and discussions today," correct?

24 A. That's what it says.

25 Q. And you, sir, over that weekend, were developing an

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Schoen - cross

1 understanding of some of the facts, as best you could, correct?

2 A. I was, along with the rest of the board of directors, yes.

3 Q. And Joe Collins wasn't present at those meetings, correct?

4 A. I don't believe so.

5 Q. And you hadn't shared with him the facts that you were  
6 learning, correct?

7 A. I don't think so.

8 Q. And here, he notes that he's offering this script, but it's  
9 based -- it's subject to further results, further  
10 investigations that Mr. Klejna and others were pursuing,  
11 correct?

12 A. That's what it says.

13 Q. Now, going back a couple of years, Mr. Schoen, back to the  
14 end of 2003, that's when you and TH Lee began to look at Refco,  
15 correct?

16 A. Yes.

17 Q. And you were introduced to Refco through an investment bank  
18 called Credit Suisse First Boston?

19 A. Yes.

20 Q. And you know from your experience that Credit Suisse First  
21 Boston is a very reputable investment bank?

22 A. Yes.

23 Q. And they presented Refco to you?

24 A. They did.

25 Q. They prepared some written materials for you with the

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Schoen - cross

1 company's management?

2 A. Yes.

3 Q. And they arranged for you to meet the company's management?

4 A. Yes.

5 Q. And there were meetings in January where you actually sat  
6 down with Mr. Bennett, Mr. Trosten, Mr. Maggio and others,  
7 correct?

8 A. Yes.

9 Q. And you learned some information about Refco's performance  
10 financially?

11 A. Yes.

12 Q. How it had done historically?

13 A. Yes.

14 Q. And Mr. Bennett and Mr. Trosten took you through that,  
15 correct?

16 A. At the meeting in January, Mr. Bennett and Mr. Trosten took  
17 us through it.

18 Q. And one of the things you like to do when you sit down with  
19 the management of a company that you're looking at, is you like  
20 to get a feel for those managers personally, correct?

21 A. Yes.

22 Q. You want to see if they inspire a certain level of  
23 confidence, correct?

24 A. Yes.

25 Q. You want to see if these are men that you can trust, right?

CABPCOL2

Schoen - cross

1 A. That's one of the things that we do.

2 Q. Yes. And so as you sit across the table, you more or less  
3 form an impression of them; you begin to size them up, correct?

4 A. Yes.

5 Q. And at this stage, in January, when you were meeting with  
6 Mr. Bennett and Mr. Trosten and Mr. Maggio, there were no  
7 lawyers in the room, right?

8 A. No.

9 Q. And after that meeting, you and Thomas H. Lee continued to  
10 move forward and continued to explore the possibility of this  
11 transaction, correct?

12 A. We did.

13 (Continued on next page)

Cabdc013

Schoen - cross

1 Q. And in February you told Credit Suisse First Boston that  
2 you were prepared to consider paying more money to purchase  
3 Refco, right?

4 A. Yes.

5 Q. Earlier in November you had put one potential price on the  
6 table, correct?

7 A. Yes.

8 Q. But in February you raised your bid, so to speak, correct?

9 A. Yes.

10 Q. And part of the reason you raised your bid is you had been  
11 impressed by what you heard from Mr. Bennett and Mr. Trosten  
12 when they met with you?

13 A. Part of the reason we raised our bid was we had been  
14 impressed by Mr. Bennett, yes.

15 Q. And in February you began what you've described as due  
16 diligence, correct?

17 A. I think we began due diligence back when we received the  
18 initial information in December. We accelerated or increased  
19 our level of due diligence after the meeting in January.

20 Q. Thank you. And in February was when you began to hire  
21 outside firms and outside consultants to assist you in the due  
22 diligence, correct?

23 A. I don't remember the exact timing. I believe that we had  
24 work -- some level of work done by our outside lawyers Weil,  
25 Gotshal right from the beginning, just confidentiality

Cabdc013

Schoen - cross

1 agreements and so forth. So I don't recall when we started  
2 doing more with outside parties.

3 Q. KPMG did accounting due diligence, correct?

4 A. They did.

5 Q. That means looking at the company's financial records, its  
6 historical financial performance, correct?

7 A. Yes.

8 Q. You hired them in February, correct?

9 A. I don't recall when we first hired them to work for us.

10 Q. In any event, you do recall that you hired a number of  
11 firms, KPMG and a number of other firms, to come in and help  
12 you?

13 A. Yes, I do.

14 Q. And these were firms that you believed to be among the best  
15 in their class for the kind of work that you were asking them  
16 to do?

17 A. Yes.

18 Q. And you wanted them to take a very careful look at Refco  
19 because you had an important decision to make about whether to  
20 buy them, correct?

21 A. We hired them to do work for us for that reason, yes.

22 Q. And KPMG is one of the largest accounting firms in the  
23 world, correct?

24 A. That's correct.

25 Q. And they spent a great deal of time looking at the books



Cabdc013

Schoen - cross

1 and the records and the entries in Refco's financial  
2 statements, right?

3 A. I don't know how much time but I believe that they spent a  
4 considerable amount of time, yes.

5 Q. And they spent a considerable amount of time talking to  
6 Refco's own outside auditors, Grant Thornton, correct?

7 A. They did.

8 Q. And they reported to you that they were comfortable with  
9 the numbers that they saw being reported in the financial  
10 statements, correct?

11 MR. LEVY: Objection. Hearsay.

12 THE COURT: Mr. Bach. Hearsay?

13 MR. BACH: It is not being offered for the truth.

14 THE COURT: What is it being offered for, then,  
15 please?

16 MR. BACH: To show that a statement was made by KPMG  
17 that they were comfortable with the numbers. We are not saying  
18 that these numbers were numbers that anyone should be  
19 comfortable with.

20 THE COURT: I thought that you were offering it for  
21 the fact that they were comfortable.

22 MR. BACH: That they reported to Mr. Schoen that they  
23 were comfortable.

24 MR. LEVY: Which is irrelevant.

25 THE COURT: Why does that differ?

Cabdc013

Schoen - cross

1 MR. BACH: It is his state of mind, Judge.

2 MR. LEVY: Why is his state of mind relevant?

3 THE COURT: You are really going to have to speak up  
4 if you want to be taken down.

5 MR. LEVY: I'm sorry. Your Honor, I don't see why his  
6 state of mind is relevant, at least in this context.

7 MR. BACH: I will rephrase the question.

8 THE COURT: Sir.

9 BY MR. BACH:

10 Q. Nothing that KPMG said to you caused you to refers course  
11 and to stop pursuing this transaction, correct?

12 A. That's correct.

13 Q. You hired -- in addition to KPMG, you hired a firm known as  
14 McKenzie, correct?

15 A. Yes.

16 Q. They were a big and sophisticated firm, correct?

17 A. Yes.

18 Q. You hired a firm called Sandler O'Neill, correct?

19 A. Yes.

20 Q. That's a well-known investment firm, specializing in  
21 financial service companies?

22 A. Yes.

23 Q. You hired Marsh & McLennan, correct?

24 A. Yes.

25 Q. And all of these firms helped you take a close look at

Cabdc013

Schoen - cross

1 Refco to assist your decision-making process in connection with  
2 a potential purchase of that company, correct?

3 A. That's correct.

4 Q. And you spent, or Thomas H. Lee spent in the neighborhood  
5 of approximately \$10 million on its own and on the due  
6 diligence efforts of all of these firms, correct?

7 A. That is correct.

8 Q. And is it fair to say, sir, that the due diligence that you  
9 performed with respect to Refco was among the most extensive  
10 due diligence that you have ever done?

11 A. In my experience, yes.

12 Q. And you, sir, have worked on about a hundred deals in your  
13 time at Thomas H. Lee, correct?

14 A. Fewer than that. My reference yesterday was to how many  
15 deals Thomas Lee as a whole company had done, but I had worked  
16 on dozens of deals.

17 Q. And the due diligence here was as expensive as the due  
18 diligence on any deal you've worked on before?

19 A. Yes.

20 Q. And all of these firms that you relied on to help you were  
21 sophisticated, professional firms, correct?

22 A. Yes.

23 Q. And none of them came to you and said don't buy this  
24 company?

25 A. That is correct.

Cabdc013

Schoen - cross

1 Q. And despite the millions of dollars you spent and the teams  
2 of professionals, none of them found a fraud, correct?

3 A. That is correct.

4 Q. And in addition to hiring all of these outside firms and  
5 spending all of this money, you contacted people on Wall Street  
6 to get a sense of what they knew and thought of Mr. Bennett,  
7 correct?

8 A. Yes. That was part of our diligence.

9 Q. And those reports, the reports from those people, came back  
10 very positive, correct?

11 A. Yes.

12 Q. They said nice things about Mr. Bennett, correct?

13 A. To the best of my recollection.

14 Q. And you hired private investigators to investigate  
15 Mr. Bennett, correct?

16 A. Yes.

17 Q. And those reports didn't come back with any indication of  
18 any reason not to go forward, correct?

19 A. That is correct.

20 Q. And one of the things that you learned in conducting the  
21 due diligence was that over the years Refco had been buying a  
22 number of companies, correct?

23 A. Yes.

24 Q. You learned that they had bought a company called  
25 Lind-Waldock?

Cabdc013

Schoen - cross

1 A. It is Lind-Waldock, yes.

2 Q. And you learned that there were seven, eight or nine other  
3 acquisitions that Refco had made?

4 A. I don't recall the number but, yes, there were a number of  
5 them.

6 Q. And it gave you some comfort that this was a company that  
7 could afford to make continuous acquisitions, that it could  
8 afford to buy a number of companies?

9 A. Yes.

10 Q. That is a sign of good financial health usually when a  
11 company can afford to do that, correct?

12 A. Yes.

13 Q. And here you believed that it was?

14 A. We believed it was an attractive part of the company's  
15 story, that it had been able to acquire other businesses as  
16 well as to grow organically and grow its own business.

17 Q. OK. As you did this due diligence, you continued to sit  
18 down with Mr. Bennett on a number of occasions, correct?

19 A. We had meetings with him. We had phone calls. Yes.

20 Q. And with Mr. Trosten?

21 A. Yes.

22 Q. And you maintained a level of confidence in him, correct?

23 A. In whom?

24 Q. In Mr. Bennett.

25 A. In Mr. Bennett, yes.

Cabdc013

Schoen - cross

1 Q. And in Mr. Trosten?

2 A. I think I mentioned earlier that we became convinced over  
3 time Mr. Trosten was not -- did not have all the capabilities  
4 we needed.

5 Q. That is later, over time, correct?

6 A. I just can't recall the timing now. I'm sorry.

7 Q. And along the way you met a lawyer named Dennis Klejna?

8 A. Yes.

9 Q. And you learned that Mr. Klejna had been the director of  
10 enforcement at the U.S. Commodity Futures Trading Commission?

11 A. That is correct.

12 Q. And that means that he was the federal official in charge  
13 of making sure that people who traded in commodities followed  
14 the rules, correct?

15 A. I believe so.

16 Q. And you understood that he was the chief lawyer inside  
17 Refco?

18 A. Yes. He was the general counsel.

19 Q. And when you were considering buying Refco, you thought it  
20 was a good sign that a lawyer with his credentials was at the  
21 helm of Refco's Legal Department, correct?

22 A. Yes, we did.

23 Q. And you thought it reflected well on Mr. Bennett that he  
24 had hired Mr. Klejna to serve in that role, correct?

25 A. Yes.

Cabdc013

Schoen - cross

1 Q. One thing you learned as you looked at Refco was that  
2 before Mr. Bennett took over the company Refco had a checkered  
3 past?

4 A. Yes.

5 Q. And that was under its former owner, correct?

6 A. That was our understanding.

7 Q. And that was a man named Tom Dittmer, correct?

8 A. Yes.

9 Q. And you learned that when Mr. Bennett took over, he brought  
10 Dennis Klejna on board, correct?

11 A. Yes.

12 Q. And it was your impression that Mr. Klejna had done a very  
13 good job in cleaning up Refco on the regulatory front, correct?

14 A. Yes, it was.

15 Q. And you and your colleagues at T. H. Lee were impressed by  
16 Mr. Klejna's knowledge of the company's details and of its  
17 business, correct?

18 A. I believe so.

19 Q. And you believed that Mr. Klejna was a man -- a lawyer with  
20 great capability, correct?

21 A. Yes.

22 Q. And you believed he had an extremely positive impact on the  
23 company, correct?

24 A. Yes.

25 Q. And you still believe that to this day?

Cabdc013

Schoen - cross

1 A. I do.

2 Q. And Mr. Klejna worked inside Refco under Mr. Bennett as his  
3 chief lawyer the whole time, sir, that you were involved with  
4 Refco, correct?

5 A. That is correct.

6 Q. Now, I was asking you before about meetings in January.

7 You received more information in March, correct?

8 A. I think we received more information as we went along, so I  
9 don't have a specific recollection of what was received in  
10 March.

11 Q. OK. In March you received more written materials and more  
12 presentations from Credit Suisse First Boston, correct?

13 A. I just don't recall timing. As I said, we continued to  
14 receive information throughout the due diligence process.

15 Q. OK. Let me show you what's been marked for identification  
16 as Defense Exhibit 164.

17 By the way, you didn't meet Mr. Collins in January,  
18 correct?

19 A. No.

20 Q. You didn't meet him in February, correct?

21 A. No.

22 Q. You didn't meet him in March, correct?

23 A. I didn't meet him in person. I may have been on a phone  
24 call with him. I just don't recall.

25 Q. The first time you met him was in April, correct?



Cabdc013

Schoen - cross

1 A. Face-to-face, yes.

2 Q. But in March you were continuing to get information from  
3 Mr. Bennett and from Credit Suisse, correct?

4 A. I believe so.

5 MR. BACH: May I approach?

6 THE COURT: Yes, sir. You don't have to ask.

7 MR. BACH: Thank you, your Honor.

8 THE COURT: You do have to walk fast, though.

9 Q. Mr. Schoen, you have before you what's been marked for  
10 identification as Defendant Exhibit 164.

11 A. OK.

12 Q. Do you recognize that document, sir?

13 A. Yes, I do.

14 Q. Is this a presentation that CSFB gave to Thomas H. Lee in  
15 connection with discussions about Refco?

16 A. Yes.

17 MR. BACH: We offer it.

18 MR. LEVY: No objection, your Honor.

19 THE COURT: Received.

20 (Defendant's Exhibit 164 received in evidence)

21 BY MR. BACH:

22 Q. And, sir, I asked you a couple of moments ago if you  
23 remembered receiving more information in March. This makes it  
24 clear that you did, correct?

25 A. Yes, it does.

Cabdc013

Schoen - cross

1 Q. And one of the things you learned in March when you were  
2 meeting with Refco's management and with Credit Suisse First  
3 Boston, one of the things you were told was that Refco had \$500  
4 million of extra cash, correct?

5 A. Yes.

6 MR. BACH: Can we open up to page 3 of the document?

7 Q. And the people who told you that, the people who told you  
8 about the \$500 million of extra cash, were Refco's management  
9 and Credit Suisse First Boston, correct?

10 A. That's correct.

11 MR. BACH: Can we highlight the fourth bullet down  
12 that says "Free Cash Flow."

13 Q. Do you see, sir, it says, "Free cash flow during this  
14 period totaled approximately \$500 million as evidenced by the  
15 analysis in Appendix 3?"

16 A. Yes.

17 Q. So CSFB gave you a written analysis to support this  
18 statement that there was \$500 million in cash, correct?

19 A. That's correct.

20 Q. Can we flip to Appendix 3?

21 This is the analysis that was presented to you and  
22 your colleagues at T. H. Lee by Credit Suisse, correct?

23 A. Yes, that's correct.

24 Q. And there is a figure towards the right end of the document  
25 that's not quite 500 million but it is 499 plus change,

Cabdc013

Schoen - cross

1 correct?

2 A. 498 plus change, but, yes, close to 500 million.

3 Q. Your eyes are better than mine.

4 And you reviewed that in March, correct?

5 A. Yes.

6 Q. OK. Can we go back to page 3.

7 Also in March there were discussions about shareholder  
8 loans, correct?

9 A. Yes.

10 Q. And, again, this is before you had met or talked to Joe  
11 Collins, correct?

12 A. Again, I had not met him. I don't recall if I was on any  
13 phone calls with him. I'm just trying to be accurate. I have  
14 no recollection --

15 THE COURT: Counsel, you have to let him finish. The  
16 court reporter is good but he isn't that good.

17 THE WITNESS: Thank you.

18 A. I have no recollection of that.

19 Q. But your first -- and I appreciate that, Mr. Schoen -- your  
20 first specific recollection of actually talking to him comes in  
21 April at a meeting --

22 A. That's correct.

23 Q. OK. But in March, when you sat down with Mr. Bennett and  
24 Credit Suisse First Boston, there is discussion about Refco's  
25 history of shareholder loans, correct?

Cabdc013

Schoen - cross

1 A. Yes.

2 Q. And you were given information about the amounts associated  
3 with those loans, correct?

4 A. Yes.

5 Q. Would you highlight the third bullet point, please.

6 You were told that "As of fiscal year end 2000,  
7 shareholder loans totaled \$228 million, as of year end 2004 the  
8 balance will be zero inclusive of ordinary course operating  
9 distributions."

10 Correct?

11 A. Yes.

12 Q. And by "shareholder loans," that's another way of talking  
13 about the related-party debt, correct?

14 A. Yes.

15 Q. And you were being told that as of fiscal year end 2000,  
16 the amount of related-party debt was \$228 million, correct?

17 A. Yes.

18 Q. You were also told that it was going to be zeroed out  
19 completely?

20 A. Yes.

21 Q. OK. And you understand, sir, that the figure you were  
22 given, the 228 million, was a figure as of the fiscal year end,  
23 correct?

24 A. I believe so.

25 Q. And typically that's the number that appears on the

Cabdc013

Schoen - cross

1 financial statement, the number as of the fiscal year end,  
2 correct?

3 A. Yes. I believe this number did.

4 Q. OK. And numbers on financial statements -- withdrawn.

5 A financial statement is a snapshot in time; it gets  
6 the numbers as they appear at the end of the year, correct?

7 A. A balance sheet is a snapshot in time. The income  
8 statement is a measurement of performance over time.

9 Q. OK. But the numbers in the statements can rise and fall  
10 during the course of the year depending on what happens at the  
11 company and how the company performs, the numbers in the  
12 balance sheets, correct?

13 A. That is correct.

14 Q. And so if \$228 million is reported on the balance sheet, it  
15 could have been higher or lower at an earlier point in the  
16 year, correct?

17 A. Yes.

18 Q. So Mr. Bennett and Credit Suisse First Boston told you that  
19 these related-party debts, these shareholder loans would be  
20 eliminated, correct?

21 A. That is correct.

22 Q. And that was before you remember meeting Mr. Collins in  
23 April, correct?

24 A. That is correct.

25 Q. And when you had these discussions with Credit Suisse First

Cabdc013

Schoen - cross

1 Boston, this was not the first time in your career you had come  
2 across shareholder debt in a company that you were considering  
3 acquiring, correct?

4 A. I think that's correct.

5 Q. There is -- let's define some terms.

6 Shareholder debt, or related-party debt, are debts or  
7 obligations between companies in the same group, correct?

8 A. Can you repeat the question, please?

9 Q. Sure. You referred to a group of companies as a family.

10 Do you remember that?

11 A. Yes.

12 Q. And shareholder debt or related-party debt are debts  
13 between companies in the same family, correct?

14 A. Not necessarily.

15 Q. OK. But if a company in a family borrows money from  
16 another company in the family, that's a related-party debt,  
17 correct?

18 A. To clarify what I said earlier when I was talking about the  
19 family, I was talking about all of the 100 percent-owned  
20 subsidiaries of Refco, the parent. And in that case, debts  
21 between those entities, if it was entities within the Refco  
22 family, would typically be called intercompany debt.

23 Q. OK. Thank you. So let's talk about intercompany debt,  
24 then.

25 Debts between companies in the same family are known

Cabdc013

Schoen - cross

1 as intercompany debt, correct?

2 A. Yes.

3 Q. And that's different from third-party debt, correct?

4 A. Yes.

5 Q. Or what's otherwise known as ordinary debt, right?

6 A. I don't know that term.

7 Q. Let's stick with third-party debt.

8 Third-party debt is when you go and borrow money from  
9 a bank, for example, right?

10 A. Yes, as an example.

11 Q. And it is when a company borrows money from an unaffiliated  
12 entity, correct?

13 A. If it is unrelated third-party debt, yes.

14 Q. OK. So third-party debt, you can go outside of the family  
15 of companies and borrow it from some independent source,  
16 correct?

17 A. If it is unrelated third-party debt, yes.

18 Q. That's what unrelated third-party debt is, correct?

19 A. Yes.

20 Q. That is different from intercompany debt, which is when you  
21 stay within the family, correct?

22 A. Yes.

23 Q. OK. And there is nothing, Mr. Schoen, surprising about the  
24 existence of intercompany debt or shareholder loans in a  
25 privately-held company, correct?

Cabdc013

Schoen - cross

1 A. That's correct, although those are different things that  
2 you referred to.

3 Q. OK. But Thomas H. Lee over the years has taken a lot of  
4 private companies and taken them public, correct?

5 A. We've invested in them and subsequently taken them public,  
6 yes.

7 Q. OK. And in these transactions you have seen on a number of  
8 occasions that there is a history of debt between, say, parents  
9 and subs, correct?

10 A. It is a very general question. I don't know how to answer  
11 it. I believe I've seen all kinds of things, sir. I'm trying  
12 to be responsive but I don't know --

13 Q. I appreciate it and I'm asking you things that are direct.

14 Here you believed that there was a history of  
15 shareholder loans among Refco entities that had been fully  
16 disclosed to you, correct?

17 A. Again, when you said "among Refco entities," it was between  
18 Refco and the holding company that owned 90 percent of its  
19 stock.

20 Q. Here you were told about a history of loans between Refco  
21 and the holding company, and you believed that the full amount  
22 of those loans had been fully disclosed to you, correct?

23 A. I did.

24 Q. OK. You had discussions with Mr. Bennett about that,  
25 right?



Cabdc013

Schoen - cross

1 A. Yes.

2 Q. And he walked you through, right?

3 A. Yes.

4 Q. And you took him at his word, correct?

5 A. Well, we believed him. We also obviously reviewed the  
6 statements with Mr. Trosten. We had conversations with the  
7 auditors. We had meetings with First Boston. But, yes, we  
8 believed him.

9 Q. And by the time you got to April, people from Thomas H. Lee  
10 and the firms that it had been working with had spent hundreds  
11 of hours doing due diligence on Refco?

12 A. Yes.

13 Q. And you decided to move the transaction forward to the next  
14 step, correct?

15 A. We did.

16 Q. And you decided that it was time to put a legal document  
17 together that would set forth the intention of the parties  
18 going forward, correct?

19 A. Yes.

20 Q. That's the Letter of Intent, correct?

21 A. That is correct.

22 Q. And there were meetings in April to discuss the content of  
23 the Letter of Intent, correct?

24 A. Yes.

25 Q. And that's a legal document generally prepared by lawyers,

Cabdc013

Schoen - cross

1 correct?

2 A. It is. I think I stated yesterday that it is nonbinding,  
3 but it was prepared with the assistance of attorneys.

4 Q. Yes. And it was in connection with the preparation of that  
5 document that you first met Joe Collins in April, correct?

6 A. It was -- we prepared it before I met Joe Collins. We  
7 presented it to Mr. Collins and Mr. Bennett.

8 Q. So when you say "we," you and your lawyers actually drafted  
9 the first draft of this document, correct?

10 A. Yes. It was drafted as a proposal.

11 Q. OK. And you and your lawyers did that on your own before  
12 you showed it to anyone outside of --

13 A. We did.

14 Q. OK. Then you sent it over to Mr. Collins and Mr. Bennett  
15 so that they could take a look at it, correct?

16 A. We -- yes.

17 Q. OK. And your lawyers, sir, were lawyers at a firm called  
18 Weil, Gotshal, correct?

19 A. That is correct.

20 Q. And that included a man name Jim Westra?

21 A. Yes.

22 Q. And Jay Tabor?

23 A. That is correct.

24 Q. And they worked with you in preparing the first draft of  
25 the Letter of Intent?

Cabdc013

Schoen - cross

1 A. Yes.

2 Q. And once you and Mr. Westra and Mr. Tabor were satisfied  
3 with what you had drafted, you sent it over to Mr. Bennett and  
4 Mr. Collins?

5 A. That is correct.

6 Q. And then you got together at two meetings to discuss it,  
7 correct?

8 A. Yes.

9 Q. And those meetings were on April 9 and April 15 in 2004?

10 A. I think I said yesterday I know they were in early April; I  
11 don't recall the exact dates.

12 Q. OK. And you and Mr. Bennett were present at those  
13 meetings?

14 A. Yes.

15 Q. Your lawyers from Weil, Gotshal, Mr. Tabor and Mr. Westra,  
16 were present at those meetings?

17 A. Yes.

18 Q. Mr. Collins was present at those meetings?

19 A. Yes.

20 Q. Credit Suisse -- representatives of Credit Suisse First  
21 Boston were present at those meetings?

22 A. I don't recall.

23 Q. And Sandler O'Neill was present at those meetings, correct?

24 A. I don't recall.

25 Q. Let me see if I can refresh your recollection.

Cabdc013

Schoen - cross

1 A. OK.

2 Q. Mr. Schoen, I'm showing you what's been marked for  
3 identification as Defense Exhibit 230, and I'm going to ask you  
4 whether this refreshes your recollection about whether Credit  
5 Suisse First Boston and Sandler O'Neill attended the meetings?

6 Why don't you take a moment to give it a look.

7 THE COURT: Mr. Schoen, counsel is asking you the same  
8 type of question as the last time; that is, after reading  
9 whatever this is, do you now say, ah, yes, I recall the answer  
10 to that question?

11 (Pause)

12 A. Other than reading the document, I don't recall it.

13 Q. That's all right. This is an e-mail that you received,  
14 Mr. Schoen, on or about April 14, 2004?

15 A. Yes.

16 MR. BACH: We offer it.

17 MR. LEVY: If I could have just one second to look at  
18 it? I don't think there is an objection, your Honor.

19 THE COURT: Yes.

20 (Pause)

21 MR. LEVY: No objection.

22 THE COURT: Received.

23 (Defendant's Exhibit 230 received in evidence)

24 MR. BACH: Can I put it up on the board?

25 If you could blow up right in the middle there where

Cabdc013

Schoen - cross

1 it says "CSFB."

2 Q. Do you see that? It says, "CSFB wants to get going at  
3 10:30 tomorrow."

4 A. Yes.

5 Q. And if you go up to the top, Ms. O'Connor, you will see  
6 that some of the e-mail addresses up there say "Sandler  
7 O'Neill."

8 Do you see that, Mr. Schoen?

9 A. Yes.

10 Q. And when you got together at the first meeting in April --  
11 we can take that down -- one of the purposes was to take some  
12 of the business terms that you and Mr. Bennett had been  
13 discussing in March, in February and put them in the form of a  
14 legal document, correct?

15 A. Yes.

16 Q. And there were items that you had discussed before meeting  
17 with Mr. Collins that you now wanted to put in legal form,  
18 correct?

19 A. Discuss with whom?

20 Q. Discuss with CSFB, with Mr. Bennett in meetings without  
21 Mr. Collins present, correct?

22 A. We didn't discuss the terms of this proposal with them  
23 before we provided it to them.

24 Q. No. But you -- in March, you had discussed the  
25 \$500 million in extra cash?

Cabdc013

Schoen - cross

1 A. Yes.

2 Q. And you had discussed the existence of shareholder loans,  
3 correct?

4 A. Yes.

5 Q. And you had discussed how they would be zeroed out,  
6 correct?

7 A. Yes.

8 Q. And you discussed all of that before you met Mr. Collins,  
9 correct?

10 A. Yes.

11 MR. BACH: Could we put up on the board Government  
12 Exhibit 825?

13 Q. This is a chronology that the government showed you on  
14 direct examination, correct?

15 A. Yes, that's correct.

16 Q. OK. And there is no entry here for March, correct?

17 A. That's correct.

18 Q. But in March, that's when you sat down with Mr. Bennett and  
19 CSFB and discussed this \$500 million and the history of  
20 shareholder loans, correct?

21 A. Yes.

22 Q. And at these two meetings in April, you recall that  
23 Mr. Collins participated?

24 A. That is my recollection.

25 Q. But you don't recall anything specific he said, right?

Cabdc013

Schoen - cross

1 A. I don't.

2 Q. Nothing stands out in your mind today?

3 A. No.

4 Q. And Mr. Bennett at these meetings continued to maintain  
5 that Refco had \$500 million in extra cash, right?

6 A. Yes.

7 Q. He had said that before, right?

8 A. Yes.

9 Q. And he was standing by it now, correct?

10 A. Yes.

11 Q. And when Mr. Bennett spoke at this meeting, he spoke  
12 plainly and clearly, correct?

13 A. I don't have a specific recollection of his speaking either  
14 way, but he did speak.

15 Q. And you remember being able to understand what he was  
16 saying, correct?

17 A. Yes.

18 Q. And Joe Collins was sitting in the same room and would have  
19 heard Mr. Bennett say the same things that you heard him say,  
20 correct?

21 A. Yes.

22 Q. And you don't know, sir, if Mr. Bennett ever told Joe  
23 Collins anything different, right?

24 A. I don't.

25 Q. And you don't know if Mr. Bennett and Mr. Trosten hid from

Cabdc013

Schoen - cross

1 Joe Collins what they were actually planning and plotting with  
2 respect to this \$500 million, correct?

3 A. I don't, no.

4 Q. And there was also discussion at these two April meetings  
5 about eliminating the shareholder loans, correct?

6 A. Yes.

7 Q. And how there would be none, none whatsoever at the  
8 closing, correct?

9 A. Yes.

10 Q. Again, Mr. Collins would have heard the same things that  
11 you heard at that meeting, correct?

12 A. Yes.

13 Q. He would have heard that Refco had at that point  
14 approximately \$120 million in outstanding shareholder loans,  
15 correct?

16 A. I think that it was 105 million.

17 Q. 105 million. And he would have heard that the clearly  
18 stated plan was to zero that out by the time that the sale to  
19 your company occurred, correct?

20 A. I think we were told it actually had been zeroed out as of  
21 the end of February but we just didn't have the financial  
22 statements yet.

23 Q. But he heard the same things that you were told --

24 A. Yes.

25 Q. And you testified that at no point in time did anyone ever



Cabdc013

Schoen - cross

1 tell you or disclose to you that Refco actually had  
2 intercompany debt of more than a billion dollars, correct?

3 A. That is correct.

4 Q. And as you sit here today you don't know whether Joe  
5 Collins was ever told that Refco had intercompany debt of more  
6 than one billion dollars?

7 A. I don't know if Mr. Collins knew.

8 Q. And you don't know whether his clients had systematically  
9 and repeatedly hidden things from him, correct?

10 A. I don't know.

11 Q. And other than these two meetings in April, you never met  
12 with Mr. Collins again?

13 A. I did not.

14 Q. After April -- the deal closed in August, 2004, correct?

15 A. Yes.

16 Q. You didn't meet with Mr. Collins at any time after those  
17 two meetings and the closing of the deal on August 2004,  
18 correct?

19 A. I don't believe so.

20 Q. And after August 2004, you joined the board of Refco?

21 A. Yes.

22 Q. And you stayed with Refco up until the time it collapsed,  
23 on October 2005?

24 A. That is correct.

25 Q. And you didn't meet with Mr. Collins even once during that

Cabdc013

Schoen - cross

1 entire period?

2 A. I don't believe so.

3 Q. And the two times you did meet with him in April, you don't  
4 recall a single word he said?

5 A. That is correct.

6 Q. You were asked some questions on direct examination about  
7 representations and warranties in the final contract. Do you  
8 remember that?

9 A. Yes.

10 Q. And that was -- that final contract was prepared after  
11 April, correct?

12 A. Yes.

13 Q. And you knew that Joe Collins was the principal lawyer on  
14 the other side of this deal, right?

15 A. Yes.

16 Q. But you never sat down and discussed any of those  
17 representations or warranties with him, correct?

18 A. No. That was my counsel's job.

19 Q. OK.

20 MR. BACH: One moment, your Honor.

21 THE COURT: Yes, sir.

22 (Pause)

23 MR. BACH: Can we show on the screen Government  
24 Exhibit 835?

25 Q. Now, very briefly, Mr. Schoen, this is a chart that the

Cabdc013

Schoen - cross

1 government showed you yesterday and introduced into evidence;  
2 correct?

3 A. Yes.

4 Q. And the title of it is "Letter of Intent," correct?

5 A. Yes.

6 Q. And immediately under that it says, "What RGHI would  
7 receive from the proposed deal," correct?

8 A. Yes.

9 Q. Now, the Letter of Intent actually spoke of what the  
10 sellers would receive from the proposed deal, correct?

11 A. Yes.

12 Q. And the sellers were RGHI and BAWAG, correct?

13 A. Yes.

14 Q. And this chart doesn't mention BAWAG, correct?

15 A. Yes. It is not on my chart but that is correct.

16 Q. It really should be retitled what the sellers would receive  
17 from the proposed deal, correct?

18 A. I think that would be more accurate, yes.

19 Q. As you testified yesterday, this chart doesn't reflect all  
20 of the expenses that would have to be paid out of the large  
21 sums here pursuant to the terms of the Letter of Intent,  
22 correct?

23 A. That is correct.

24 Q. There were hundreds of millions of dollars of expenses that  
25 RGHI would have to pay pursuant to the Letter of Intent,

Cabdc013

Schoen - cross

1 correct?

2 A. No, they were not expenses. There were hundreds of  
3 millions of dollars of outstanding debt that had to be paid  
4 off.

5 Q. To be clear, that is not the intercompany debt we are  
6 talking about?

7 A. No, that is right. That was debt to U.S. banks.

8 Q. That was debt that was specifically mentioned in the  
9 footnotes of the Letter of Intent, correct?

10 A. Yes, it is.

11 Q. And that is not reflected anywhere here in the government's  
12 chart, correct?

13 A. Correct.

14 Q. Now, after the two meetings in April, you went on to meet  
15 with Phil Bennett many more times, correct?

16 A. Yes.

17 Q. You had very direct contact with him personally?

18 A. Yes.

19 Q. And that's from April through August, correct?

20 A. Yes.

21 Q. And then for another year after Thomas H. Lee had bought  
22 Refco, correct?

23 A. That is correct.

24 Q. You and he were on the Board of Directors together, right?

25 A. Yes.

Cabdc013

Schoen - cross

1 Q. He was the CEO of the company while you were the lead  
2 person from Thomas H. Lee on the board, correct?

3 A. I didn't have a title as lead person, but I was one of the  
4 senior people from Thomas H. Lee on the board.

5 Q. Thank you. And often you and Mr. Bennett had lunch or  
6 dinner together?

7 A. We had dinner on a couple of occasions. We had lunch on  
8 more occasions.

9 Q. And often you met with him with just the two of you,  
10 correct?

11 A. Yes.

12 Q. OK. And over time you developed great confidence in him?

13 A. I did.

14 Q. And you felt he was someone you could trust?

15 A. Yes.

16 Q. Now, one feature of the agreement that you made with  
17 Mr. Bennett to buy Refco involved him continuing to be a  
18 co-owner, correct?

19 A. That is correct.

20 Q. You were prepared, and you wanted him, to continue to be a  
21 co-owner of the company, correct?

22 A. It was one of the most important parts of the transaction.

23 Q. That's right. You insisted that Mr. Bennett be a co-owner,  
24 right?

25 A. To be fair, he -- that's what he wanted and we wanted. So

Cabdc013

Schoen - cross

1 "insisted" is not quite the right characterization.

2 Q. I withdraw it and I accept your recharacterization.

3 According to the terms of the deal, Mr. Bennett was to  
4 be the sole person who held any interest in RGHI after the deal  
5 closed, right?

6 A. That is correct.

7 Q. Thomas H. Lee was going to own 57 percent of Refco, right?

8 A. Yes.

9 Q. And RGHI was going to own the remaining 43 percent of  
10 Refco, right?

11 A. Yes.

12 Q. And Mr. Bennett was going to be the only guy who owned that  
13 43 percent, right?

14 A. That is correct.

15 Q. And one of the things that you wanted to make sure of was  
16 before the deal closed, that he had bought out anyone else who  
17 had any interest in RGHI so that he would be the only guy when  
18 the deal closed, right?

19 A. As of the closing, yes.

20 Q. OK. And Mr. Bennett gave you, in writing, his personal  
21 covenant that that would take place, correct?

22 A. That is correct.

23 Q. OK. And that was in a document called the Security Holders  
24 Agreement, correct?

25 A. You would have to refresh my recollection. I'm sorry.

Cabdc013

Schoen - cross

1 Q. OK. Absolutely.

2 Let me show you what's been marked Defendant's Exhibit  
3 206, for identification.

4 And, Mr. Schoen, I should have -- it is a big  
5 document. I should have referred you to a particular page.  
6 Page 36, sir.

7 (Pause)

8 A. Yes.

9 Q. Do you recognize this document?

10 A. Yes, I do.

11 Q. Is this a Security Holders Agreement dated August 5, 2004,  
12 between New Refco Group Limited and other parties?

13 A. Yes.

14 MR. BACH: We offer it, Judge.

15 MR. LEVY: No objection, your Honor.

16 THE COURT: Received.

17 (Defendant's Exhibit 206 received in evidence)

18 MR. BACH: Ms. O'Connor, if we could put Section 10.10  
19 of page 36 on the board.

20 Q. Mr. Schoen --

21 A. Yes.

22 Q. -- this agreement, the Security Holders Agreement, was  
23 dated on the same day as the closing of the leveraged buyout of  
24 Refco, correct?

25 A. Yes.

Cabdc013

Schoen - cross

1 Q. And it was designed that way so that all of these  
2 agreements would be executed together -- all of these  
3 agreements would take place together on the same day, correct?

4 A. That is correct.

5 Q. OK. And if you look at Section 10.10, that's entitled  
6 "Bennett Ownership of RGHI." Do you see that?

7 A. Yes.

8 Q. And it says: "Effective as of the closing date, Bennett is  
9 the sole owner of RGHI." Correct?

10 A. Yes.

11 Q. And it says: "Bennett hereby covenants and agrees that,  
12 during the term of this agreement, he at all times will  
13 continue to directly own, of record and beneficially, all of  
14 the outstanding capital stock of RGHI, that he will not pledge  
15 or otherwise permit his shares of the capital stock of RGHI to  
16 be encumbered in any manner and that he will not grant any  
17 proxy or otherwise transfer voting power or economic rights of  
18 ownership or enter into any voting agreement with respect to  
19 capital stock of RGHI."

20 Correct?

21 A. Yes.

22 Q. And this was a critical provision for you, correct?

23 A. Yes.

24 Q. And you expected Mr. Bennett to comply with this in full?

25 A. Yes.



Cabdc013

Schoen - cross

1 Q. And that means that you expected him to go and buy out any  
2 other interests at the RGHI level before his deal with you  
3 closed, correct?

4 A. At the time of closing, yes.

5 Q. And you knew, sir, that there were some other interests and  
6 obligations at the RGHI level, correct?

7 A. I believe that we understood that there were some other  
8 things to be paid off, yes.

9 Q. And when I say "the RGHI level," I just want to be clear.  
10 There is -- Refco is an operating company, correct?

11 A. Refco is the company we invested in, yes.

12 Q. Refco is the company that Thomas H. Lee bought the  
13 57 percent in?

14 A. That is correct.

15 Q. But above Refco there were two companies that owned Refco,  
16 right? There was Refco Group Holdings, Inc.?

17 A. On the chart, which I think we shared, we walked through  
18 yesterday, RGHI was shown to own 90 percent and a BAWAG entity  
19 was shown to have owned 10 percent.

20 Q. That's at the ownership level above Refco, correct?

21 A. It is above Refco on the chart, yes.

22 Q. Those weren't the companies that Thomas H. Lee was buying,  
23 right?

24 A. No.

25 Q. You were buying the company at the bottom of the chart,

Cabdc013

Schoen - cross

1 Refco, right?

2 A. That's correct.

3 Q. And when I refer to the RGHI level or the ownership level,  
4 will you understand that what I mean is those two companies  
5 depicted on the chart up above Refco?

6 A. Yes.

7 Q. OK. Now, there came a time that you had a phone call with  
8 Mr. Bennett because you wanted an understanding of how the  
9 proceeds from the deal would be used, correct?

10 A. Yes.

11 Q. And you weren't asking him for a very detailed  
12 understanding; you were asking him to give you what you  
13 considered a businessman's understanding or a Reader's Digest  
14 version, correct?

15 A. Yes.

16 Q. And that means, Mr. Bennett, tell me generally but I don't  
17 need all the details, correct?

18 A. That's correct.

19 Q. And that's because you had that covenant by which he had  
20 personally guaranteed that he would eliminate all the other  
21 interests, correct?

22 A. We had that covenant and he was reinvesting \$400 something  
23 million of stock back into the deal.

24 Q. OK. And you didn't need all of the details as long as you  
25 got the Reader's Digest version, right?

Cabdc013

Schoen - cross

1 A. That's correct.

2 Q. Because you had your deal, right?

3 A. And we weren't dealing with those other entities, that is  
4 right.

5 Q. And you had your covenant, correct?

6 A. Yes.

7 Q. And you didn't need to do any due diligence at the RGHI or  
8 ownership level because you had that covenant, correct?

9 A. Yes, and because we weren't transacting with that company.

10 Q. Right. You were just transacting with Refco, the company  
11 at the bottom of the chart, correct?

12 (Pause)

13 A. To clarify, yes, that's correct, but our partner in the  
14 transaction going forward was going to be RGHI. And so we  
15 didn't care about -- and, clearly, as shown in the Securities  
16 Agreement and in other places, we cared about who our partner  
17 was.

18 Q. Yes. And that's why you called Mr. Bennett on the phone  
19 and you asked him to give you a businessman's understanding of  
20 what he was going to do with the proceeds from the deal; that's  
21 one of the reasons, correct?

22 A. That's one of the reasons.

23 Q. And you had this phone call with Mr. Bennett on June 3rd,  
24 2004, correct?

25 A. I believe that's when it was.

Cabdc013

Schoen - cross

1 Q. And that was before that final contract was signed?

2 A. Yes.

3 Q. And you were on this call and your colleague Dave Harkins  
4 was on the call, too, correct?

5 A. Yes, that's correct.

6 Q. And there were no lawyers on the call, right?

7 A. No, there were not.

8 Q. Your lawyers, Mr. Westra, Mr. Tabor, they were not on that  
9 call?

10 A. They were not.

11 Q. Joe Collins wasn't on that call?

12 A. No.

13 Q. But you and Mr. Harkins spoke to Mr. Bennett over the  
14 phone, correct?

15 A. Yes.

16 Q. And you had -- you could do this over the phone because you  
17 weren't asking him to show you any documents, right?

18 A. We did it over the phone because it was the most convenient  
19 thing to do.

20 Q. OK. And you talked to him and said give me a businessman's  
21 version of what's going to happen with the proceeds, correct?

22 A. That's correct.

23 Q. And it was a pleasant conversation?

24 A. Yes, it was.

25 Q. And you were satisfied after the call that Mr. Bennett had

Cabdc013

Schoen - cross

1 told you what there was to be told, correct?

2 A. We were satisfied.

3 Q. The call gave you a great deal of comfort, correct?

4 A. Yes.

5 Q. OK. Let me show you what's been marked for identification  
6 as Defense Exhibit 2008.

7 That's an e-mail that you wrote on June 3rd, the day  
8 before you signed the final contract agreement, right?

9 A. Yes.

10 MR. BACH: We offer it.

11 MR. LEVY: If I could have one second just to look at  
12 it?

13 THE COURT: Yes, please.

14 (Pause)

15 MR. LEVY: I mean, it is clearly hearsay but we don't  
16 object, your Honor.

17 THE COURT: Received.

18 (Defendant's Exhibit 2008 received in evidence)

19 MR. BACH: Ms. O'Connor, could you please put it up on  
20 the board. And could you blow up the date at the top.

21 Q. June 3rd, 2004; correct, Mr. Schoen?

22 A. Yes.

23 Q. And you are the author of this e-mail?

24 A. Yes.

25 Q. And you're sending this e-mail to a number of your

Cabdc013

Schoen - cross

1 colleagues TH Lee?

2 A. Yes.

3 Q. And you're sending it to your lawyers at Weil, Gotshal,  
4 right?

5 A. That's correct.

6 Q. That's Mr. Westra and Mr. Tabor?

7 A. Yes.

8 MR. BACH: And let's blow up the text of the e-mail.

9 Q. The subject of it, by the way, is Phil Bennett, right?

10 A. Yes.

11 Q. And you write -- can we blow up the text?

12 You write: "Dave" -- that's Mr. Harkins, right?

13 A. Yes.

14 Q. "Dave and I had an excellent conversation with Phil this  
15 morning. We both have a great deal of comfort that we now  
16 understand how the S Corp." -- the S Corp. is RGHI, correct?

17 A. Yes.

18 Q. "we now understand how the S Corp. has paid its taxes, how  
19 the proceeds are being applied" -- that's the proceeds from the  
20 deal, correct?

21 A. Yes.

22 Q. "and where Phil will wind up. I would be happy to walk any  
23 of you through it when you have a chance. Scott."

24 Correct?

25 A. Yes.

Cabdc013

Schoen - cross

1 MR. BACH: Now, you could take that down.

2 Q. Let's talk about what was said during that phone call.

3 You and Mr. Bennett discussed an interest held by Tom  
4 Dittmer, correct?

5 A. Yes.

6 Q. Tom Dittmer was the former owner of Refco who Mr. Bennett  
7 bought the company from, correct?

8 A. That was my understanding, yes.

9 Q. And he was the former owner who you understood had a  
10 "checkered" past, right?

11 A. Yes.

12 Q. And you expected that Mr. Bennett would pay whatever it  
13 needed to buy out Mr. Dittmer so that Mr. Bennett would be the  
14 only person holding an interest in RGHI at the time the deal  
15 closed, correct?

16 A. Yes. My understanding from -- should I reference my  
17 conversation with Mr. Bennett, or not? I just want to be  
18 accurate.

19 Q. Yes. That's what I am asking you.

20 A. OK. My understanding was that Mr. Dittmer, when he sold  
21 the company to Mr. Bennett, retained a contingent right to  
22 receive a portion of proceeds from a future sale, and  
23 Mr. Bennett told us in our conversation that that was one of  
24 the uses of the money that was coming to RGHI, it was going to  
25 be to pay off that contingent interest.

Cabdc013

Schoen - cross

1 Q. Thank you. And he told you that Mr. Dittmer would be  
2 getting approximately 75 to \$100 million to buy out that  
3 contingent interest, correct?

4 A. That's my recollection, yes.

5 Q. OK. And you didn't object, right?

6 A. No.

7 Q. And you understood that there is a contract, or a legal  
8 document, that memorialized Mr. Dittmer's continuing interest?

9 A. I assumed so.

10 Q. You knew there was a contract, correct, Mr. Schoen?

11 A. As I said, I assumed so.

12 (Pause)

13 I don't believe I ever saw it. That's why I'm not  
14 telling you that I knew it, but I may have seen it.

15 (Pause)

16 Q. And, Mr. Schoen, you testified on a prior occasion as  
17 follows:

18 "Q And you understood that Dittmer had a contractual right to  
19 those proceeds?

20 "A That's what he told us, yes."

21 A. Yes.

22 Q. Does that refresh your recollection that Mr. Bennett told  
23 you that there was a contract here?

24 A. Again, my answer was that I assumed that was the case, and  
25 I think that that prior testimony confirms that I was told that



Cabdc013

Schoen - cross

1 was the case. But I never actually saw it, which is why I said  
2 I don't know if there was a contract.

3 Q. So you never actually saw it, right?

4 A. Correct.

5 Q. And you never asked Mr. Bennett to see it, right?

6 A. I did not.

7 Q. OK. And that's because you weren't binding the companies  
8 at the ownership or parent level, right?

9 A. That's because all other interests, including  
10 Mr. Dittmer's, were terminated, according to our contract, with  
11 RGHI as of the closing.

12 Q. Right. And that was your main interest, to make sure that  
13 all those other interests were terminated, right?

14 A. That is correct.

15 Q. So you didn't need to see any of the paperwork, any of the  
16 legal paperwork at the RGHI or the ownership level, correct?

17 A. For the transactions that were described to us, no.

18 Q. And when you closed the deal and bought 57 percent of  
19 Refco, there was a document called a flow of funds memo,  
20 correct?

21 A. That is correct.

22 Q. And that flow of funds memo is a memo that shows how the  
23 funds are going to flow from the deal, correct?

24 A. Yes. It shows who gets paid what.

25 Q. OK. And you didn't expect to see this payment to

Cabdc013

Schoen - cross

1 Mr. Dittmer on that flow of funds memo, correct?

2 A. That is correct.

3 Q. And that's because, again, it was at the ownership or RGHI  
4 level, correct?

5 A. That's correct. We were sending money to RGHI, and then  
6 they were applying it to deal with their obligations.

7 Q. Now, did you tell your lawyers at Weil, Gotshal about what  
8 you had learned from Mr. Bennett about this Dittmer buyout?

9 A. Yes.

10 Q. Which lawyer did you tell, Mr. Westra or Mr. Tabor or  
11 another lawyer?

12 A. I believe both of them.

13 Q. OK. And what was their reaction?

14 A. I don't recall.

15 Q. And after learning that Mr. -- after being told that  
16 Mr. Dittmer would receive approximately 75 million or \$100  
17 million, neither you nor your lawyers caused that fact to be  
18 disclosed in any of the legal paperwork for the bond offering,  
19 right?

20 A. The bond investors also were not investing in RGHI.

21 Q. Right. They were not investing in the companies at the  
22 ownership or the RGHI level, right?

23 A. They were lending money to Refco.

24 Q. That's the company at the bottom of the chart, right?

25 A. That is correct.

Cabdc013

Schoen - cross

1 Q. And so you saw no need and your lawyers saw no need to  
2 disclose this Dittmer transaction in the bond disclosures,  
3 correct?

4 A. Our disclosure was very clear that RGHI was 100 percent  
5 owned by Mr. Bennett, and so this other information was  
6 irrelevant. It was prior to the closing --

7 Q. It was also irrelevant for purposes of the initial public  
8 offering, right?

9 A. That's correct.

10 Q. It was not disclosed in the filings and the registration  
11 statements for the initial public offering, correct?

12 A. That is correct. The initial public offering disclosure  
13 was regarding Refco.

14 Q. Now, Mr. Bennett also told you in this phone call that  
15 BAWAG, an Austrian bank, was going to get money from the  
16 proceeds of this transaction, right?

17 A. That is correct.

18 Q. You already knew that BAWAG owned 10 percent of Refco,  
19 right?

20 A. Yes.

21 Q. And that they were going to get money as a result of that  
22 interest, right?

23 A. That's correct.

24 Q. But he told you that in fact BAWAG was going to get even  
25 more money, correct?

Cabdc013

Schoen - cross

1 A. Yes.

2 Q. They were going to get more money beyond their stock  
3 interest, correct?

4 A. Yes.

5 Q. He told you that he was going to give BAWAG proceeds of  
6 between -- additional proceeds of between 400 and \$500 million,  
7 correct?

8 A. He did not say he was going to give it to BAWAG. He was  
9 repaying a loan is what he told us.

10 Q. OK. He told you that BAWAG had loaned him and Mr. Grant  
11 between 400 and \$500 million, correct?

12 A. No. He told us that BAWAG had loaned them a smaller amount  
13 of money when they purchased the company from Mr. Dittmer and  
14 that with accrued interest, that the outstanding balance on the  
15 loan was between 400 and \$500 million.

16 Q. So he told you that from the proceeds, 400 or 500 million  
17 would go to BAWAG to repay the loan, including interest?

18 A. That's correct.

19 Q. And you didn't object?

20 A. No.

21 Q. You didn't ask to see any of the loan documents?

22 A. No.

23 Q. You didn't ask for a single piece of paper relating to that  
24 loan, correct?

25 A. That is correct.

Cabdc013

Schoen - cross

1 Q. And that's because these were RGHI or parent-level  
2 obligations, correct?

3 A. That is because the loan was being paid off as of the  
4 closing, and we weren't doing business with BAWAG either going  
5 forward. At the moment that we were investing in the company,  
6 we were invested in Refco.

7 (Continued on next page)

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CABPCOL4

Schoen - cross

1 BY MR. BACH:

2 Q. And these loans were not held at the Refco level, correct?

3 A. That's what we were told.

4 Q. And you did not receive them as having any impact  
5 whatsoever on Refco, correct?

6 A. That's correct.

7 Q. And you did not expect to see this 400 or \$500 million  
8 going to BAWAG on the flow of funds memo?

9 A. That's correct.

10 Q. Now, did you tell your lawyers at Weil Gotshal about the  
11 400 or \$500 million that Mr. Bennett would use to pay back the  
12 loan to BAWAG?

13 A. Yes.

14 Q. Which lawyer did you tell?

15 A. Same two lawyers, Mr. Westra and Mr. Tabor.

16 Q. And do you have -- And what did they say?

17 A. I don't recall.

18 MR. LEVY: Objection.

19 A. Excuse me.

20 Q. Did they voice any objection?

21 MR. LEVY: Objection.

22 THE COURT: Sustained.

23 Q. And this 400 or \$500 million was not something that was  
24 disclosed in the bond offering in which public investors bought  
25 bonds in Refco, right?

CABPCOL4

Schoen - cross

1 A. That's correct.

2 Q. And it was not disclosed in any of the registrations or  
3 other filings in connection with the IPO, in which the public  
4 purchased stock in Refco, correct?

5 A. That's correct.

6 Q. Now, Mr. Schoen, let's just talk about all the money that  
7 you understood BAWAG would be receiving in connection with this  
8 leveraged buyout transaction. You understood that \$191 million  
9 would be going to BAWAG to purchase its 10 percent equity  
10 interest in Refco, correct?

11 A. That's correct.

12 Q. And you understood -- and were told that, in addition to  
13 that \$191 million, there was another half billion or 400 to  
14 \$500 million that was being used to pay back a loan to BAWAG?

15 A. That's correct.

16 Q. And you understood that there was going to be \$500 million  
17 that was going to be held in a segregated account at BAWAG for  
18 the benefit of RGHI, correct?

19 A. Yes.

20 Q. And you knew all of that before you signed the deal with  
21 Mr. Bennett, correct?

22 A. Yes.

23 Q. And you knew that BAWAG was a related party for purposes of  
24 the LBO transaction, correct?

25 A. Yes, they were a 10 percent owner of the company.

CABPCOL4

Schoen - cross

1 Q. And knowing all of that, you went ahead and signed the  
2 deal, correct?

3 A. Yes.

4 Q. And you understood that, with respect to the \$500 million,  
5 that BAWAG itself was entitled to a portion of that money,  
6 correct?

7 A. Yes.

8 Q. Because they were one of the sellers, right?

9 A. That's correct.

10 Q. And they had 10 percent interest, equity interest, correct?

11 A. Yes.

12 Q. Okay. And the way you dealt with Mr. Bennett on this  
13 transaction is not inconsistent with the way that you've  
14 interacted and dealt with CEOs in other deals that you've done  
15 throughout your history, correct?

16 A. It's quite consistent.

17 Q. Okay. As a matter of practice, you normally don't do due  
18 diligence on a chief executive officer's personal finances,  
19 correct?

20 A. That's correct.

21 Q. You have never asked -- In all of your time at TH Lee,  
22 you've never asked for a CEO's tax returns, correct?

23 A. Correct.

24 Q. And you've never investigated a CEO's business dealings,  
25 right?



CABPCOL4

Schoen - cross

1 A. Oh, yes, we have.

2 Q. Well, let's see.

3 MR. CHERNOFF: Can we have a sidebar, your Honor?

4 MR. BACH: Objection, I didn't finish this.

5 MR. LEVY: May we get a page reference on the prior  
6 testimony?

7 MR. BACH: Sure.

8 MR. LEVY: Before he just launches into it?

9 THE COURT: Sure. Go ahead.

10 MR. BACH: Page 248, a proceeding on September 24,  
11 2008.

12 THE COURT: Let's make it easy, kids.

13 MR. BACH: Why don't I just stand right next to  
14 Mr. Levy.

15 THE COURT: Why don't you just let him look at it  
16 first, and then just go, assuming there's no objection.

17 MR. BACH: Thank you.

18 Q. Mr. Schoen, you have previously testified under oath in a  
19 prior proceeding that "I have been in the business since 1986.  
20 We have looked at hundreds and hundreds of companies. We have  
21 invested in and acquired more than a hundred businesses over  
22 the past 25 years, and we have never once asked for personal  
23 tax returns from the CEO of the company or done a personal  
24 investigation of his other business dealings." That was your  
25 testimony, correct?

CABPCOL4

Schoen - cross

1 A. That was my testimony, yes.

2 Q. In your experience, Mr. Schoen, CEOs are not keen on  
3 sharing the details of their personal finances if they don't  
4 have to, correct?

5 A. I can't make a general statement. As I said, we've never  
6 asked for it.

7 Q. There's no reason to ask for information about their  
8 personal finances if they have no impact on the company you're  
9 acquiring, right?

10 A. I think I stated previously, and just to clarify or expand,  
11 we do background checks on the senior executives of the  
12 companies that we invest in and those background checks would  
13 involve investigators having some feedback to us on the general  
14 business reputation of other dealings. It's the specific  
15 financial diligence on the executives that we've never done.

16 Q. Okay. And your investigators did some background checks on  
17 Mr. Bennett, right?

18 A. Yes.

19 Q. But you didn't do any specific financial due diligence on  
20 his other business dealings, correct?

21 A. That's correct.

22 Q. Okay. And his personal finances, as you understood it, had  
23 no impact whatsoever on the companies you were buying, correct?

24 A. To clarify, and I have testified to this with you, as well,  
25 his personal finances, to the extent of my understanding of how

CABPCOL4

Schoen - cross

1 much money he had and was taking out of the company versus how  
2 much money he was reinvesting back into the company, was very  
3 relevant to us, but that was it.

4 Q. Understood. And that's why you wanted the Reader's Digest  
5 or the businessman's understanding?

6 A. Correct.

7 Q. But beyond that, you didn't feel you needed to see anything  
8 further?

9 A. Correct.

10 MR. BACH: Judge, would this be a good time for a  
11 lunch break?

12 THE COURT: I think it is. Ladies and gentlemen,  
13 let's take a lunch break out into the sun. Would you please,  
14 to the extent you've put your exhibits in your folders, leave  
15 them on your seats, please. Take your books with you into the  
16 jury room. Please remember not to discuss the case among  
17 yourselves or with anyone else or do any research on the case.  
18 And most of all, have a wonderful lunch, and I'll look for the  
19 weather report when you return. Thank you. So sorry, 2:15,  
20 please. Have a lovely lunch. Thank you for your attention  
21 this morning, ladies and gentlemen.

22 (Jury exits)

23 MR. LEVY: Your Honor, just a couple of quick issues.

24 THE COURT: Won't you be seated.

25 MR. LEVY: I don't think it matters that the witness

CABPCOL4

Schoen - cross

1 is in here for this.

2 THE COURT: All right. You're going to get stuffed in  
3 the hall again, Mr. Schoen. We promise we won't leave you  
4 there. Thank you.

5 (Witness temporarily excused)

6 THE COURT: Mr. Levy?

7 MR. LEVY: I think we may have some misunderstanding  
8 between our two tables on what is allowed in terms of prior  
9 consistent and inconsistent statements. The e-mail that was  
10 put in as defense Exhibit 208 is pure bolstering. The  
11 defendant had said nothing inconsistent with it. That, I  
12 suppose I could have objected to, if I wanted to.

13 About two minutes later, the defense decides to just  
14 launch into reading a prior consistent piece of testimony that  
15 Mr. Schoen had given, without giving us a page reference,  
16 without giving us a chance --

17 THE COURT: Why are we doing that, Mr. Bach? You know  
18 better than that.

19 MR. BACH: Judge, it was inconsistent. He said that  
20 he had never personally -- He said he had investigated CEOs.  
21 So I read him testimony that said that he hadn't.

22 MR. LEVY: Not that one, your Honor. The one he read  
23 before that was perfectly consistent --

24 MR. BACH: Well, he said --

25 THE COURT: One at a time, kids.

CABPCOL4

Schoen - cross

1 MR. BACH: Okay.

2 THE COURT: Topic?

3 MR. LEVY: I'm trying to remember. It was consistent  
4 so it didn't really matter, but it would bolster --

5 THE COURT: Mr. Bach, you really have to give the page  
6 reference or help out. You really can't just launch into it.  
7 Right?

8 MR. BACH: You are absolutely right, your Honor. And  
9 I will absolutely do that, and I appreciate it.

10 THE COURT: All right.

11 MR. LEVY: One other issue, your Honor. I think we're  
12 prepared to say that we're on notice of any defense exhibits  
13 that came in last time. One of the ones that came in this  
14 time, Defense Exhibit 206 --

15 THE COURT: How many pages was that?

16 MR. LEVY: It's about a 50-page exhibit that got  
17 handed to us. Now, I think it is something that actually came  
18 in last time as a government exhibit. If I understand what it  
19 is, I think it may have been a portion of the closing binder,  
20 but the fact of the matter is if we're getting handed something  
21 on the fly and I don't have a clue what it is and it wasn't  
22 introduced as a defense exhibit at the last trial, we just  
23 can't react to that. So if we could ask that we be given those  
24 things in advance so we know what it is.

25 MR. SCHWARTZ: Your Honor, we respectfully decline to

CABPCOL4

Schoen - cross

1 give the government our cross-examination exhibits while a  
2 witness is on direct before they call them. I have tried many  
3 cases. I have never known that to be the practice.

4 MR. LEVY: We can take a ten-minute break every time  
5 they give us a 50-page document to see if we can figure out  
6 what it is, but that seems like --

7 THE COURT: Okay. But nevertheless, they don't have  
8 to give them to you ahead. Anything else, kids?

9 MR. LEVY: Nope. Thank you.

10 THE COURT: We're off the record.

11 (Whereupon a luncheon recess was taken)  
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CABPCOL4B

Schoen - cross

## A F T E R N O O N   S E S S I O N

2:21 P.M.

THE COURT: Good afternoon, ladies and gentlemen. May we bring the jurors in?

MR. CHERNOFF: Yes, your Honor.

THE COURT: Thank you.

(Witness resumes stand)

(Jury enters)

THE COURT: Good afternoon, ladies and gentlemen of the jury. Thank you for being so prompt. What's the weather report?

JUROR: Beautiful.

JUROR: Fabulous.

THE COURT: I'm so glad. Is it as warm as it feels?

JUROR: Only in the sun.

THE COURT: Well, when you stand by the window, you can really feel the heat. So, oh, good, I'm really glad. I hope you had a good lunch.

JUROR: Yes.

THE COURT: Welcome back. Thank you again, and won't you be seated. We continue with the cross-examination of Mr. Schoen.

MR. BACH: May I proceed?

THE COURT: Yes, sir.

MR. BACH: Thank you.

CABPCOL4B

Schoen - cross

1 CROSS-EXAMINATION (Continued)

2 BY MR. BACH:

3 Q. Mr. Schoen, you testified this morning about a point in  
4 time when the stock of Refco hit its peak; do you remember  
5 that?

6 A. Yes.

7 Q. Can you give us a ballpark figure of what Mr. Bennett's  
8 holdings were worth when the stock hit its peak?

9 A. About \$1 billion.

10 Q. You also testified this morning about a phone call with  
11 Mr. Bennett, where he told you that Tone Grant was getting  
12 hundreds of millions of dollars from the deal; do you remember  
13 that?

14 A. Yes.

15 Q. And you testified that you later learned when you saw the  
16 agreement, that Mr. Grant was only getting \$4 million upfront,  
17 correct?

18 A. Yes.

19 Q. And you explained that that came to you as a complete  
20 surprise?

21 A. Yes.

22 Q. And it would have caused you seriously to halt in your  
23 tracks and reconsider the deal?

24 A. Yes.

25 Q. And you testified that you had asked for it, asked to see a



CABPCOL4B

Schoen - cross

1 copy of the agreement before the deal closed, but had a  
2 conversation with your lawyers in which they told you it was  
3 something you weren't going to get to see, correct?

4 A. Yes.

5 Q. And when a deal closes, there is something called the  
6 closing, right?

7 A. Yes.

8 Q. And there's something called a pre-closing, correct?

9 A. Often, yes.

10 Q. Okay. And in simple terms, and I know I'm going to  
11 oversimplify here, that's when all of the important documents  
12 are laid out on a table for the different parties to sign and  
13 look at so that they can close the deal, correct?

14 A. Yes.

15 Q. Did your lawyers tell you that they had been informed that  
16 the --

17 MR. LEVY: Objection, before he even asks the  
18 question, your Honor.

19 THE COURT: Mr. Bach?

20 Q. Did your lawyers tell you --

21 THE COURT: No, no.

22 MR. LEVY: Objection.

23 THE COURT: It's a hearsay objection?

24 MR. LEVY: Yes. He's going to ask a question that he  
25 can't possibly answer.

CABPCOL4B

Schoen - cross

1 MR. BACH: I think the answer is going to be no.

2 THE COURT: Why are we asking the question if we're  
3 looking --

4 MR. BACH: Because this is a very important factor.  
5 Can we have a sidebar?

6 THE COURT: Sure, but don't tell me it's an important  
7 factor means the rules don't apply.

8 MR. BACH: Okay.

9 (Continued on next page)

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CABPCOL4B

Schoen - cross

1 (At the side bar)

2 THE COURT: Gents?

3 MR. SCHWARTZ: Your Honor, there are a lot of people's  
4 testimony in this case is going to be impeached, including the  
5 lawyers at Weil Gotshal, who we contend there's evidence to  
6 show knew before they told him that it --

7 THE COURT: Off the record.

8 (Off the record.)

9 MR. SCHWARTZ: We contend there is evidence to show, I  
10 believe the government disputes it, that Weil Gotshal was  
11 informed by Mayer Brown, he said that they told him two days  
12 before the closing that he wasn't going to get the document.

13 We contend there's evidence to show that Weil Gotshal  
14 was told by Mayer Brown, significantly before that, that the  
15 document would be produced at the closing. We contend there's  
16 evidence to show that it was, in fact, produced at the closing,  
17 and that Weil Gotshal then put it into the closing binder,  
18 which made its way to his office, into their offices. They all  
19 claim never to have known. They all claim it wasn't produced  
20 to them.

21 He's testified -- If you want to talk about hearsay,  
22 he's already testified that Weil Gotshal told him it wasn't  
23 going to be produced at the closing. They offered that for the  
24 truth of the matter asserted. All we want to do is to be able  
25 to say, they didn't tell him that. They had been told by Mayer

CABPCOL4B

Schoen - cross

1 Brown that it was going to be produced at the closing.

2 THE COURT: So it's double hearsay?

3 MR. SCHWARTZ: Excuse me?

4 THE COURT: Did your lawyers tell you that Mayer Brown  
5 told them?

6 MR. SCHWARTZ: That's fine.

7 THE COURT: No, no. It's double hearsay.

8 MR. SCHWARTZ: No, did your lawyers tell you that it  
9 was going to be -- that it appeared on a closing checklist  
10 submitted by Mayer Brown prior to the closing.

11 THE COURT: I don't see how you get this question out  
12 because, obviously, you're looking to solicit here for the  
13 truth of the --

14 MR. SCHWARTZ: It's on the closing checklist. We do  
15 that subject to connection.

16 MR. LEVY: But it's hearsay. You're right. If the  
17 closing checklist is coming in at some time, that's fine. I  
18 just don't understand the question, did your lawyers tell you  
19 what somebody else told them that.

20 THE COURT: I don't see how you get the hearsay in if  
21 you have the closing checklist.

22 MR. SCHWARTZ: The hearsay is the closing checklist,  
23 correct?

24 THE COURT: No, the hearsay is, did your lawyers tell  
25 you.

CABPCOL4B

Schoen - cross

1 MR. SCHWARTZ: If the answer to that is, no, it comes  
2 to impeach the lawyers who are claiming -- People are wanting  
3 to recover in this case because everybody got sued, as your  
4 Honor well knows, and they have a document, the lawyers  
5 received a document we contend at the closing of this matter  
6 that he just said was the smoking gun to a fraud.

7 THE COURT: Okay.

8 MR. SCHWARTZ: And so that gives people motives.

9 THE COURT: Sure, but you're allowed to argue that. I  
10 just don't see how you ask the guy for the hearsay.

11 MR. BACH: Can I just chime in briefly?

12 THE COURT: Only if you do it quietly.

13 MR. BACH: Sometimes I'm too quiet; sometimes I'm too  
14 loud.

15 THE COURT: Three little pigs.

16 MR. BACH: They asked the question, did your lawyers  
17 tell you.

18 MR. LEVY: That's not the question I asked.

19 MR. BACH: I just want to respond in kind. Did your  
20 lawyers tell --

21 THE COURT: No, no, that's not one of the rules  
22 either.

23 MR. LEVY: It's also not the question I asked. Did  
24 you have an understanding as to whether you were going to see  
25 it or not. I tried not to elicit the hearsay.

CABPCOL4B

Schoen - cross

1 MR. SCHWARTZ: But their understanding is based on the  
2 hearsay, and then he said my lawyers told me that.

3 MR. LEVY: I don't recall whether he said that.

4 THE COURT: But that's not a rule either. Just like  
5 it's very important, it's not a rule either. I don't see how  
6 you get to this question.

7 MR. SCHWARTZ: Okay.

8 THE COURT: All right, kids. Thanks.

9 (Continued on next page)

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CABPCOL4B

Schoen - cross

1 (In open court)

2 THE COURT: Sir?

3 Q. Mr. Schoen, before the break I was asking you questions  
4 about the Tone Grant agreement?

5 A. Yes.

6 Q. Okay? Did you know, sir, that Mayer Brown produced that  
7 document at the closing for this transaction?

8 A. No.

9 Q. All right.

10 THE COURT: I'm sorry, Mr. Bach. In light of the  
11 question, at the end of the case, one of the things I'm going  
12 to tell you is if in a question a lawyer assumes certain facts  
13 and, in the whole of the evidence there is no support for the  
14 fact and the witness says no, then you can't assume the fact to  
15 be true. But it's the whole evidence in the entire case. But  
16 that's the instruction, and you'll get it again at the end of  
17 the case. Mr. Bach?

18 Q. Your lawyers at Weil Gotshal were at the closing, correct?

19 A. Yes.

20 Q. And lawyers from the Mayer Brown firm were at the closing,  
21 correct?

22 A. I believe so. I wasn't there.

23 Q. And your lawyers prepared a big binder known as a closing  
24 binder, correct?

25 A. I don't know who prepared it.

CABPCOL4B

Schoen - cross

1 Q. But a closing binder was prepared, correct?

2 A. Yes.

3 Q. And that's a big binder that includes all of the important  
4 documents from the closing, correct?

5 A. Yes.

6 Q. Typically, the buyer's lawyers prepare the closing binder,  
7 correct?

8 A. I don't know.

9 Q. Okay. And a copy of that binder was delivered to your --  
10 to TH Lee, correct?

11 A. Yes.

12 Q. And that binder had this document in it, the Grant  
13 agreement, correct?

14 A. Yes.

15 Q. It was sitting in your offices, correct?

16 A. Yes.

17 Q. And you testified that you first saw it when the United  
18 States Attorney's Office showed it to you, correct?

19 A. That's correct.

20 Q. But it was sitting in your office in the closing binder  
21 well before then, correct?

22 A. That's my understanding.

23 Q. And your lawyers at Weil Gotshal had a copy of that closing  
24 binder, too?

25 A. I believe so.



CABPCOL4B

Schoen - cross

1 Q. And their copy had the Grant agreement inside it, too,  
2 right?

3 A. Yes.

4 Q. And in your copy of the closing binder, the Grant agreement  
5 was listed on the table of contents, correct?

6 A. I think so.

7 Q. And there came a time -- So Mr. Schoen, all that you or  
8 your lawyers would have had to do would be open the closing  
9 binder to the table of contents, and you would have seen that  
10 document there, correct?

11 A. Yes.

12 Q. And a year after the closing, there was an initial public  
13 offering in this case, right?

14 A. Yes.

15 Q. And you would assume, sir, that for purposes of that public  
16 offering, your lawyers at Weil Gotshal would have gone through  
17 all the documents to make sure that anything important would be  
18 disclosed, correct?

19 A. I assume that they would make sure that the company was  
20 disclosing everything that we believed we knew was important.

21 Q. And the lawyers at Weil Gotshal were lead counsel on that  
22 IPO, correct?

23 A. Yes.

24 Q. And no disclosure was made of this agreement, correct?

25 A. That's correct.

CABPCOL4B

Schoen - cross

1 Q. And just to be clear, the closing binder had been delivered  
2 prior to the IPO, correct?

3 A. Yes.

4 Q. Now, you involved the Weil Gotshal law initially in the  
5 process when you began looking at Refco, correct?

6 A. Yes, we engaged them at the outset.

7 Q. Okay. And they were responsible, among other things, for  
8 doing what's known as legal due diligence, correct?

9 A. Yes.

10 Q. And that means looking at legal contracts and other legal  
11 documents, among other things?

12 A. Yes.

13 Q. And there was a data room, a room set up at Credit Suisse  
14 First Boston for that purpose, correct?

15 A. Yes.

16 Q. And that's a room where lots of documents were put so that  
17 people who were thinking about buying Refco could take a look  
18 at them?

19 A. Yes.

20 Q. And your lawyers at Weil Gotshal went into that document  
21 data room and look a look at the documents, correct?

22 A. They looked at what was there, yes.

23 Q. Did Weil Gotshal ever tell you that they'd seen a reference  
24 in that data room to a Proceeds Participation Agreement between  
25 the company and DF Capital, dated July 12th, 2002?

CABPCOL4B

Schoen - cross

1 A. No.

2 Q. Did your lawyers at Weil Gotshal ever tell you that they  
3 considered that a minor point to keep track of?

4 A. They never told me anything about that.

5 Q. Did your lawyers at Weil Gotshal ever tell you that they  
6 considered asking for a copy of the document after they saw the  
7 reference?

8 MR. LEVY: Objection, your Honor. I think given the  
9 first two answers --

10 THE COURT: Sustained.

11 Q. Now, Mr. Schoen, you testified that PPA was not disclosed  
12 to you at the time of the transaction, correct?

13 A. That's correct.

14 Q. And, sir, you were not aware at the time of the transaction  
15 of what legal steps, if any, were taken to eliminate the rights  
16 and obligations under the PPA, correct?

17 A. That's correct.

18 Q. You were not aware of discussions and legal arrangements,  
19 if any, undertaken by Joe Collins and lawyers at the McDermott  
20 Will law firm to extinguish the rights and obligations under  
21 the PPA?

22 MR. LEVY: Your Honor, objection to this line, given  
23 the answer to the first question in this line.

24 THE COURT: Sustained.

25 Q. You were not aware, sir, that the rights and obligations

CABPCOL4B

Schoen - cross

1 under the PPA were, in fact, extinguished?

2 MR. LEVY: Objection, your Honor.

3 THE COURT: Sustained.

4 Q. Sir, as you sit here today, you don't know whether if you  
5 had seen the PPA at the time of the transaction, it would have  
6 had any impact on your view of the transaction, right?

7 A. I gave my views earlier, but of course, it's speculation  
8 because I didn't know about it.

9 Q. So as you sit here today, you can't say one way or the  
10 other whether it would have had any impact on your view of the  
11 transaction?

12 A. I believe I testified as to my opinion.

13 Q. I'm just asking you, sir, for an answer.

14 A. I don't know because it didn't happen.

15 Q. As you sit here today, you don't know one way or the other  
16 whether it would have had any impact on your view of the  
17 transaction?

18 A. I don't know.

19 Q. Now, after the deal closed, TH Lee entered into a  
20 side-letter agreement with Mr. Bennett relating to certain  
21 adjustments, correct?

22 A. Could you repeat the question?

23 Q. Sure. After the LBO closed, TH Lee entered into a  
24 side-letter agreement with Mr. Bennett?

25 A. Yes.

CABPCOL4B

Schoen - cross

1 Q. Can you tell the jury what a side letter is, Mr. Schoen?

2 A. It's just an agreement that's not included in the main  
3 documents.

4 Q. And you've seen the side letters in the context of numerous  
5 transactions you've been involved in?

6 A. Yes.

7 Q. Nothing unusual about a side letter, right?

8 A. No.

9 Q. Now, Mr. Schoen -- One moment. Mr. Schoen, a lot of  
10 lawsuits were filed after Refco collapsed, right?

11 A. Yes.

12 Q. And with no intention whatsoever to embarrass you. You've  
13 been among the people who have been sued, correct?

14 A. We've been sued, and we've sued others, yes.

15 Q. And you have been asked to testify a number of times in  
16 various other matters and proceedings?

17 A. That's correct.

18 Q. Okay. And in those proceedings, you've been represented by  
19 a number of law firms, correct?

20 A. Yes.

21 Q. Including Weil Gotshal, correct?

22 A. Yes.

23 Q. And that's the same law firm that represented you in the  
24 LBO transaction, correct?

25 A. Yes.

CABPCOL4B

Schoen - cross

1 Q. And lawyers from the Weil Gotshal firm have been witnesses  
2 in those same proceedings, correct?

3 A. In some of them, yes.

4 Q. Okay. And at times, you and the lawyers that you had at  
5 Weil Gotshal had been represented by the same counsel, correct?

6 A. I believe so.

7 Q. In other words, some of the lawyers who have prepared you  
8 to testify have also prepared some of the Weil Gotshal lawyers  
9 that you worked with to testify, correct?

10 A. I believe that's correct.

11 Q. And when I'm referring to preparation, that simply means  
12 when you testify, you don't come in cold, right?

13 A. It's your term, but yes.

14 Q. And you sit down in the room with lawyers and look at  
15 documents and refresh yourself, correct?

16 A. Yes.

17 Q. Refresh your recollection. And sometimes the lawyers ask  
18 you questions that they anticipate, correct?

19 A. Yes.

20 Q. And you've met with the prosecutors in this case, correct?

21 A. Yes.

22 Q. And they asked you questions, correct?

23 A. Yes.

24 Q. And you mentioned a moment ago that TH Lee has sued other  
25 parties, correct?

CABPCOL4B

Schoen - cross

1 A. Yes.

2 Q. And one of the parties that TH Lee has sued is the Mayer  
3 Brown law firm, correct?

4 A. That's correct.

5 Q. And those are civil lawsuits, right?

6 A. Yes.

7 Q. Those are lawsuits for money, correct?

8 A. Yes.

9 Q. And, sir, I don't want you to get into any financial  
10 amounts here, but one of the things that Thomas H. Lee has done  
11 is it's had to pay settlements, correct?

12 A. Yes.

13 Q. And at one point, Thomas H. Lee entered into something  
14 called a tolling agreement with its law firm, Weil Gotshal,  
15 correct?

16 A. Yes.

17 Q. And that's essentially an agreement that reserved Thomas H.  
18 Lee's rights to sue Weil Gotshal if it chose to do so, correct?

19 A. It did.

20 Q. And there came a point when Weil Gotshal -- Again, I don't  
21 want to talk about amounts, but there came a point when Weil  
22 Gotshal agreed to pay money to Thomas H. Lee to resolve any  
23 outstanding dispute, correct?

24 A. Weil Gotshal made a contribution to one of the settlements.

25 Q. And that was after you approached Mr. Westra and asked him

CABPCOL4B

Schoen - cross

1 to do that, correct?

2 A. That's correct.

3 Q. And in connection with that, TH Lee gave the Weil Gotshal  
4 law firm what's known as a release, releasing them from any  
5 further liability, correct?

6 A. That's correct.

7 Q. And you described that as -- Okay. And, sir, you  
8 understood that payment to be an investment in a relationship  
9 going forward?

10 A. That's correct.

11 Q. What do you mean by that, sir?

12 A. We had a long-standing relationship with Weil Gotshal. We  
13 were both, unfortunately, involved in the long story that we've  
14 been discussing the last two days about the demise of Refco.  
15 We incurred very substantial legal fees in the course of  
16 defending the lawsuits and the course of pursuing other  
17 lawsuits, and Weil was working for us, and so we asked them to  
18 make a contribution to help defray our expenses as an  
19 investment in the relationship.

20 Q. And when you say an investment in the relationship, you're  
21 referring to the relationship going forward into the future?

22 A. That's correct.

23 Q. Because you contemplate a continuing relationship with Weil  
24 Gotshal?

25 A. We have one, yes.



CABPCOL4B

Schoen - cross

1 Q. Okay. In fact, Weil Gotshal has been the counsel for  
2 Thomas H. Lee in a number of deals since the collapse of Refco,  
3 correct?

4 A. That's correct.

5 Q. And Mr. Westra, your lawyer on the TH Lee deal, has been  
6 the lead counsel on a number of those deals, correct?

7 A. Yes.

8 Q. And has Mr. Tabor been involved in any of those deals?

9 A. Not to my knowledge.

10 Q. Okay. And when you met with Mr. Westra and talked to him  
11 about money, about the investment in the future, you also spoke  
12 to him about how matters would be staffed going into the  
13 future, correct?

14 A. I think so, yes.

15 Q. To your knowledge, did anyone at TH Lee request that  
16 Mr. Tabor not be staffed on any more deals?

17 A. Absolutely not.

18 Q. Now, you worked very closely with Mr. Bennett for a period  
19 of over a year, correct?

20 A. Yes.

21 Q. You met with him many times?

22 A. Yes.

23 Q. And you developed great confidence in him?

24 A. Yes.

25 Q. You learned about his reputation in the field, right?

CABPCOL4B

Schoen - cross

1 A. Yes.

2 Q. And you developed your own sense of him from your  
3 interactions, correct?

4 A. Yes.

5 Q. And, sir, you have a lot of experience in dealing with  
6 businessmen, correct?

7 A. Yes.

8 Q. And you pride yourself on the ability to look someone in  
9 the eye and know whether he's honest, correct?

10 A. Usually.

11 Q. And at times, at times over the months that you were  
12 involved with Refco, issues would arise and Mr. Bennett was  
13 able to allay your concerns, correct?

14 A. That's correct.

15 Q. He was always able to make you feel comfortable, correct?

16 A. Up until the discovery of the related-party loan, that's  
17 correct.

18 Q. Let me rephrase. Up until October 2005, when that loan was  
19 discovered by Mr. Sherer, he was always able to make you feel  
20 comfortable when issues arose, correct?

21 A. Yes.

22 Q. Okay. We spoke earlier about how a letter of intent was  
23 signed in April, correct?

24 A. April 2004.

25 Q. April 2004. April 19th, correct?

CABPCOL4B

Schoen - cross

1 A. Yes.

2 Q. Okay. You have a colleague named Scott Jaeckel, correct?

3 A. Yes.

4 Q. And at some point after the letter of intent was signed,  
5 Mr. Jaeckel expressed to you that he was tossing and turning at  
6 night wondering how to get more comfort about the \$500 million,  
7 correct?

8 A. I believe he sent an e-mail to that effect.

9 Q. Let me show you defense Exhibit 226. Mr. Schoen, let me  
10 know when you're done taking a quick look.

11 A. I'm done.

12 Q. This is an e-mail to you and others from Mr. Jaeckel dated  
13 April 28th, 2004, correct?

14 A. Yes.

15 MR. BACH: We offer it into evidence.

16 MR. LEVY: No objection, your Honor.

17 THE COURT: Received.

18 (Defendant's Exhibit 226 received in evidence)

19 MR. BACH: Miss O'Connor, could you put it up on the  
20 screen.

21 Q. Mr. Schoen, this e-mail is dated April 28th, correct?

22 A. Yes.

23 MR. BACH: And, Miss O'Connor, if you could blow up  
24 and highlight the middle paragraph that begins "I spent the  
25 night."

CABPCOL4B

Schoen - cross

1 Q. And it says, this is from your colleague Mr. Jaeckel to  
2 you, correct?

3 A. To me and others, yes.

4 Q. To you and other people at TH Lee, right?

5 A. Yes.

6 Q. And he says, "I spent the night tossing and turning,  
7 wondering how we can get more comfort on the \$500 million of  
8 excess cash. DVH" -- that's David Harkins, correct?

9 A. Yes.

10 Q. -- "suggested we put KPMG on the case." KPMG was the big  
11 accounting firm that you hired to do your accounting due  
12 diligence, right?

13 A. That's correct.

14 Q. So David Harkins "suggested we put KPMG on the case. I'm  
15 happy to do that, but not optimistic that they'll get very far.  
16 Thoughts?" Do you see that?

17 A. Yes.

18 Q. Did TH Lee put KPMG on the case?

19 A. I don't recall the details of what we did.

20 Q. Did Thomas H. Lee investigate any further after Mr. Jaeckel  
21 raised these concerns?

22 A. I don't recall how we developed comfort.

23 Q. Did you bring Mr. Jaeckel's concerns to the attention of  
24 your lawyers at Weil Gotshal?

25 A. I don't recall the details of our conversations.

CABPCOL4B

Schoen - cross

1 Q. Did you ever ask your lawyers at Weil Gotshal to tell Joe  
2 Collins that concerns had arisen about the \$500 million after  
3 the letter of intent was signed?

4 A. I don't have any recollection of that.

5 Q. And after you received this e-mail from Mr. Jaeckel, you  
6 continued to meet with Mr. Bennett, correct?

7 A. Yes.

8 Q. And you continued to trust him, correct?

9 A. Yes.

10 Q. And Mr. Jaeckel ultimately signed off on the deal with  
11 Refco?

12 A. Mr. Jaeckel joined the board of directors and also signed  
13 the registration statement, as I did.

14 Q. As you did, too, correct?

15 A. Yes.

16 Q. And a reference to the 500 million was included in the  
17 filings for the initial public offering, correct?

18 A. That's correct.

19 Q. And despite Mr. Jaeckel's concerns, you maintained full  
20 confidence in Mr. Bennett and his integrity and his honesty,  
21 correct?

22 A. Yes.

23 Q. Until October 2005?

24 A. Yes.

25 Q. Okay. There also came a time when you got a tip from

CABPCOL4B

Schoen - cross

1 someone who's been referred to as "Deep Throat," correct?

2 A. Not by me.

3 Q. KPMG referred to the tipster as Deep Throat, correct?

4 A. Again, not to me.

5 Q. Okay. But you've heard of Deep Throat in connection with  
6 this transaction, correct?

7 A. I've seen an e-mail that KPMG referred to a tip -- a  
8 tipster as Deep Throat.

9 Q. And the tip was from a contact that TH Lee had at Bear  
10 Stearns, correct?

11 A. That's correct.

12 Q. And the nature of this tip was that Refco had somehow been  
13 hiding losses, correct?

14 A. Not Refco, one of its European subsidiaries.

15 Q. The loss -- What you heard was that one Refco entity was  
16 sloughing off losses onto another Refco entity that wasn't  
17 consolidated for accounting purposes, correct?

18 A. I don't recall that they were both Refco entities. I think  
19 it was to an unconsolidated entity.

20 Q. You recall, sir, that the tip -- Well, let's just back up a  
21 step. The person who gave this tip was an individual named  
22 Brad Reifler, correct?

23 A. The tip -- The person who called me, told me he had  
24 received the tip from an individual named Brad Reifler.

25 Q. The person who called you was the contact at Bear Stearns?

CABPCOL4B

Schoen - cross

1 A. That's correct.

2 Q. And he had gotten information from a Brad Reifler, correct?

3 A. Yes.

4 Q. And the nature of the tip was that losses were being taken  
5 from one entity and sloughed off onto another, correct?

6 A. No, not were being. The nature was in the past there had  
7 been some losses in one unconsolidated European entity, that it  
8 was moved to another for tax purposes.

9 Q. So what you learned was that in the past there had been  
10 instances where losses suffered by one Refco entity had been  
11 moved off the books of that entity to another?

12 A. To an unconsolidated entity, that was the tip that I  
13 received.

14 Q. Yes. That was the substance of the tip, right?

15 A. Yes.

16 Q. And that was so that the losses, which you heard -- was  
17 that that was so that the losses wouldn't appear on the books  
18 of the consolidated entity, correct?

19 A. I didn't hear an explanation as to why.

20 Q. And --

21 A. Excuse me. What I was told that they were being moved to  
22 minimize tax liabilities.

23 Q. And you brought this to the attention of KPMG?

24 A. We had conversations with our counsel and with KPMG about  
25 the tip.

CABPCOL4B

Schoen - cross

1 Q. And KPMG suggested a bunch of steps that might be taken to  
2 investigate further, correct?

3 A. Let me just clarify my statement, if I could, please,  
4 because I got a little confused. I was told about the purpose  
5 of minimizing tax liabilities at a later date. I'm sure you  
6 can come to that later if you want to. I just wanted to  
7 clarify my testimony.

8 So I didn't know the purpose at the time, and we  
9 communicated with KPMG before we had a chance to provide them  
10 with any of the information about the details requesting  
11 possible procedures that we might undertake if we wanted to  
12 investigate further.

13 Q. So you learned about this purported tax purpose at a later  
14 date?

15 A. I did. I apologize for the confusion.

16 Q. That's fine. And when you first heard about it, what you  
17 heard about was the sloughing off of losses from one entity?

18 A. That's correct.

19 Q. And this issue arose before TH Lee signed the final  
20 contract, right?

21 A. That's correct.

22 Q. And you've said a moment ago you discussed it with your  
23 lawyers, correct?

24 A. We did.

25 Q. Did you ask them to communicate to Joe Collins that



CABPCOL4B

Schoen - cross

1 information had been received which suggested that losses were  
2 being sloughed from one entity to another?

3 A. I don't believe so.

4 Q. KPMG prepared a list of steps that could be taken to  
5 investigate further, correct?

6 A. I think I just testified to that, yes.

7 Q. Okay. And TH Lee did not take those steps, correct?

8 MR. LEVY: Objection, your Honor. I apologize. It  
9 may require a sidebar to articulate the objection.

10 THE COURT: All right. Miss Reporter.

11 (Continued on next page)

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CABPCOL4B

Schoen - cross

1 (At the side bar)

2 MR. LEVY: Your Honor, I've let this line of  
3 questioning go because I have in my head a theory of relevance  
4 that it's not objectionable, but to the extent it's going to  
5 stray over, for no relevant purpose, into the supposed  
6 negligence of TH Lee. The negligence of the victim in a fraud  
7 case is of no moment at all. Up until the point where he  
8 started asking about things they didn't do -- I don't want to  
9 volunteer where I think they may be going with this that would  
10 be relevant, maybe they're not going there, but I know what's  
11 happening with this next question that is suggesting that TH  
12 Lee somehow was negligent and didn't do stuff.

13 MR. SCHWARTZ: No. What TH Lee does is, instead of  
14 following these procedures, it's about his confidence in  
15 Bennett. They don't follow KPMG's procedures. He instead goes  
16 to see Bennett, and Bennett persuades him that there's nothing  
17 wrong here, and that's exactly the point we're trying to make  
18 here, that even faced with the allegation of precisely the kind  
19 of wrongdoing that took place here, Bennett was able to  
20 convince him there was no fraud.

21 MR. LEVY: That's fine. I thought that's where they  
22 were going. I don't understand what the relevance, though, is  
23 KPMG suggested that you did these things and --

24 MR. BACH: I'm not going any further. I just asked  
25 him one question. I don't know if he answered.

CABPCOL4B

Schoen - cross

1 THE COURT: We're not going anywhere.

2 MR. BACH: I don't know if he answered it.

3 MR. LEVY: If we move forward --

4 MR. SCHWARTZ: Your Honor, if the answer is they  
5 didn't do it, it's relevant to the same point, which is that --  
6 not to the fact that he's negligent, but to the fact that  
7 Bennett is so persuasive he doesn't take the steps that are  
8 indicated by --

9 THE COURT: All right.

10 MR. LEVY: That's fine. The answer has been given.

11 MR. SCHWARTZ: Has the answer been given?

12 MR. BACH: I just want to repeat, you said a moment  
13 ago that --

14 THE COURT: There actually is no answer recorded to  
15 that question.

16 MR. SCHWARTZ: I think that's your objection -- when  
17 you objected.

18 MR. LEVY: I thought he had actually answered anyway.  
19 I still, frankly, don't see why that bears on that. It just  
20 suggests negligence. If the question is what did you do, why  
21 can't it just be I talked to them --

22 THE COURT: I understand Bennett is persuasive  
23 argument. If at some point you want me, later on, to tell  
24 them, you know, the victim's negligence is of no moment, that's  
25 all fine.

CABPCOL4B

Schoen - cross

1 MR. BACH: I don't want to suggest the victim is being  
2 negligent here. I don't think they were.

3 THE COURT: I just said that I thought that the  
4 announced purposes was relevance.

5 MR. BACH: Yes.

6 THE COURT: In order to guard against -- I'm talking  
7 about charge now at some point in the future --

8 MR. SCHWARTZ: Yes.

9 THE COURT: -- if you want to ask, you can ask.

10 MR. LEVY: Okay. Thank you.

11 MR. SCHWARTZ: Thank you, Judge.

12 MR. BACH: So I'm going to ask that one question.

13 THE COURT: How much longer?

14 MR. BACH: I'm in the final sections. I think I have  
15 about 30 minutes.

16 THE COURT: Okay.

17 (Continued on next page)

CABPCOL4B

Schoen - cross

1 (In open court)

2 Q. Before the break, I asked whether TH Lee had followed any  
3 of the steps recommended by KPMG. Did it?

4 A. We did not.

5 Q. What TH Lee did do was talk to Mr. Bennett, correct?

6 A. No, we did more than that.

7 Q. You had a face-to-face meeting with Mr. Bennett after you  
8 heard about this tip, correct?

9 A. I just answered we did more than that. The first thing  
10 that we did is we spoke to KPMG. Shall I continue?

11 Q. I don't mean to cut you off, but if there's more --

12 A. We spoke to KPMG, and we concluded that the entity in  
13 question had been fully consolidated into Refco Europe during  
14 the periods in question, and the tip, on its face, didn't make  
15 any sense, which is why we didn't pursue any of the potential  
16 procedures. We then had a face-to-face meeting with  
17 Mr. Bennett.

18 Q. You decided that this merited a face-to-face meeting with  
19 Mr. Bennett, correct?

20 A. Somebody called us and accused him of doing something  
21 wrong. We thought it was appropriate, as our future partner,  
22 that we should have a conversation with him and tell him about  
23 it.

24 Q. And you and Mr. Harkins met with him, correct?

25 A. Mr. Lee and Mr. Harkins and I met with him, yes.

CABPCOL4B

Schoen - cross

1 Q. And that was in New York at his office?

2 A. That's correct.

3 Q. And, sir, let me show you what's been marked for  
4 identification as Defense Exhibit 211.

5 A. I'm familiar with it.

6 Q. This is an e-mail that you sent to some of your colleagues  
7 at TH Lee and to your lawyer at Weil Gotshal on May 30th, 2004,  
8 correct?

9 A. Yes.

10 MR. BACH: We offer it.

11 MR. LEVY: No objection, your Honor.

12 THE COURT: Received.

13 (Defendant's Exhibit 211 received in evidence)

14 MR. BACH: Can we blow up the --

15 Q. Well, Mr. Schoen, at the top of the document we see that  
16 you're the author, correct?

17 A. Yes.

18 Q. And to the right we see who you're sending this to,  
19 correct?

20 A. Yes, that's correct.

21 Q. It's Mr. Jaeckel and others at TH Lee, as well as Jim  
22 Westra and Jay Tabor both of Weil Gotshal, correct?

23 A. Yes.

24 Q. And the subject is Royce, correct?

25 A. Yes.

CABPCOL4B

Schoen - cross

1 Q. And that was the code name that everyone was using for  
2 Refco, correct?

3 A. Correct.

4 Q. But the feeling at TH Lee was that Refco was a Rolls Royce,  
5 correct?

6 A. No comment. I think that was CSFB's term.

7 Q. Thank you. The top paragraph which you wrote says, "No  
8 worries. If there is a meeting with Phil Tuesday, it will be  
9 me, DVH and THL." That's you, Mr. Harkins and Mr. Lee,  
10 correct?

11 A. Yes.

12 Q. "As always, I feel so much better after talking with Phil  
13 that I am not sure we should go see him anyway." Correct?

14 A. Yes.

15 Q. You had such confidence in Mr. Bennett that you felt that  
16 there was really no need to talk to him about this at all,  
17 correct?

18 A. Actually. It was a combination of my confidence in  
19 Mr. Bennett and the fact of what we had already learned about  
20 the details of the tip that had been sent our way didn't make  
21 sense on their face, and the fact that the person in question  
22 who had provided the tip to our contact at Bear Stearns hadn't  
23 worked at Refco in more than five years.

24 So at this point, we had -- we were giving little  
25 credence to the tip, but it was also we had confidence in

CABPCOL4B

Schoen - cross

1 Mr. Bennett.

2 Q. And you had already spoken to him on the phone about this  
3 matter, correct?

4 A. I don't recall.

5 Q. In any event, Mr. Schoen, you went and met face-to-face  
6 with Mr. Bennett, along with your colleagues, correct?

7 A. Yes, we did.

8 Q. He gave you an explanation, correct?

9 A. Yes.

10 Q. Okay. And after that conversation, you went away confident  
11 that you had no reason to be concerned, correct?

12 A. Yes.

13 Q. That was after the face-to-face meeting with Mr. Bennett,  
14 correct?

15 A. Yes.

16 Q. Now, by the way, after Refco collapsed, you met personally  
17 with Brad Reifler, that's the ultimate tipster, and with  
18 Mr. Dittmer, correct?

19 A. No.

20 Q. Didn't they approach and have a meeting about buying Refco?

21 A. They approached us, and they had a meeting with Mr. Lee and  
22 Mr. Harkins. I did not attend.

23 Q. Okay.

24 A. When I say "they," I was referring to the contact at Bear  
25 Stearns and Mr. Reifler. I think it was his cousin.



CABPCOL4B

Schoen - cross

1 Q. Okay. If you were at the meeting, I don't intend to  
2 inquire.

3 A. All right.

4 Q. Now, there were times in your work with Mr. Bennett that  
5 you felt something should have been disclosed that he hadn't  
6 disclosed to you, correct?

7 A. Yes.

8 Q. And you would sit and talk to him when those situations  
9 arose, correct?

10 A. That's correct. When we had differences, we talked openly  
11 about them.

12 Q. And sometimes you would meet with him face-to-face to  
13 discuss those differences, correct?

14 A. Sometimes.

15 Q. Okay. And some of those conversations took place after TH  
16 Lee had purchased its interests in Refco, correct?

17 A. Yes.

18 Q. Okay. And one of those matters involved, you learned that  
19 money had been paid to employees from the LBO proceeds that had  
20 not been disclosed to you before, correct?

21 A. That's correct.

22 Q. The LBO closed in August 2004, correct?

23 A. Yes.

24 Q. But Mr. Bennett had never disclosed that to you before the  
25 LBO closed?

CABPCOL4B

Schoen - cross

1 THE COURT: The money payment, right?

2 MR. BACH: The money payments, correct.

3 A. My recollection is that those were incentive payments on  
4 the sale that were paid by Mr. Bennett and not by Refco.

5 Q. Yes, but you felt that that was something that he should  
6 have told you about, correct?

7 A. I did.

8 Q. And you went down to New York to meet with him face-to-face  
9 about this?

10 A. Yes.

11 Q. Just you and he, right?

12 A. That's right.

13 Q. And Mr. Collins wasn't at that meeting?

14 A. Nope.

15 Q. And he wasn't at the meeting about the Deep Throat tip,  
16 right?

17 A. No.

18 Q. Okay. And after you met with Mr. Bennett, you were  
19 satisfied that you could move forward with him and go to an  
20 IPO, correct?

21 A. Yes.

22 Q. Okay. And you concluded that it was simply a difference of  
23 opinion about disclosure, a judgment call, correct?

24 A. That's correct.

25 Q. People disagree about disclosures all the time, correct?

CABPCOL4B

Schoen - cross

1 A. They do.

2 Q. And you thought his judgment was wrong, right?

3 A. Yes.

4 Q. But you didn't think at the time that there was any evil  
5 motive behind it, correct?

6 A. That's correct.

7 Q. Do you still believe that, Mr. Schoen?

8 A. I haven't really given it so much thought. I don't believe  
9 a lot of what I was told by Mr. Bennett over the course of the  
10 years.

11 Q. Prosecutors showed you some documents, including materials  
12 prepared by CSFB, that showed that over the years -- or that  
13 state that over the years, Refco had minimal customer losses;  
14 do you remember that?

15 A. Yes.

16 Q. And that was important to you, as you were considering in  
17 investing in Refco?

18 A. Yes.

19 Q. And before the deal closed, you learned that Refco had  
20 suffered \$42 million in trading losses in connection with the  
21 account of a customer named Victor Niederhoffer?

22 A. That's correct.

23 Q. And that did not shake your confidence in Mr. Bennett,  
24 correct?

25 A. I believe that occurred in 1997. We were looking at the

CABPCOL4B

Schoen - cross

1 previous five years when we referenced, for less than \$1  
2 million of trading losses that we discussed earlier, and that  
3 was our focus, was the business since Mr. Bennett had invested  
4 and acquired it.

5 Q. So none of this caused you to pause and the sense of  
6 confidence that you had?

7 A. That was old news before the period of time we were  
8 investigating.

9 Q. And would you say that between the first time you met  
10 Mr. Bennett and the last time you spoke with him, in  
11 October 2005, that you had hundreds of conversations with him?

12 A. At least dozens, possibly hundreds.

13 Q. Okay. Some were over the phone but some were face-to-face?

14 A. Yes.

15 Q. And you now know that he lied to you in quite a number of  
16 those interactions, correct?

17 A. Yes.

18 Q. And until October of 2005, you never once suspected that he  
19 was lying to you, correct?

20 A. That's correct.

21 Q. And I think it's fair to say that, in your mind, he's a  
22 pretty good liar?

23 A. The most compelling liar I ever caught.

24 Q. I mean, he absolutely straight-faced lied to you, correct?

25 A. I no longer know which of the things he told me were true

CABPCOL4B

Schoen - cross

1 and which weren't. The company doesn't even have financials;  
2 so.....

3 Q. So even in October 2005 when he was in Asia, we don't  
4 remember which Japan or China, he's still perfectly cool when  
5 he's talking about the discovery of \$400 million of  
6 related-party receivables, correct?

7 A. Yes.

8 Q. He's maintaining his composure in trying to talk to you,  
9 correct?

10 A. He was.

11 Q. He wasn't acting as if the whole world were suddenly coming  
12 down?

13 A. Not at first.

14 Q. Okay. Now, Mr. Schoen, you have a degree from Yale and two  
15 degrees from Harvard, correct?

16 A. Yes.

17 Q. One is a business degree, one is a law degree, and you are  
18 a very experienced and sophisticated businessman?

19 MR. LEVY: Your Honor, I object just because that was  
20 a couple of questions all rolled into one. There's several  
21 questions.

22 MR. BACH: I don't want to embarrass Mr. Schoen, but I  
23 have to ask him these questions.

24 THE COURT: He's already blushing; so let's get on  
25 with it.

CABPCOL4B

Schoen - cross

1 A. I hate to ask you to repeat the question.

2 Q. Let's take them one at a time. You have a degree from  
3 Yale?

4 A. Yes.

5 Q. You have two degrees from Harvard?

6 A. I do.

7 Q. One is a business degree?

8 A. Yes.

9 Q. One is a law degree, correct?

10 A. Yes.

11 Q. And you've been very successful in the world of business?

12 A. I've been very fortunate, yes.

13 Q. And TH Lee, as you see it, has a pretty powerful reputation  
14 in the world of business, correct?

15 A. Yes.

16 Q. And you've had the good fortune to meet hundreds of CEOs  
17 and business leaders of major corporations throughout your  
18 career, right?

19 A. Yes.

20 Q. You've met highly reputable lawyers and bankers, correct?

21 A. Yes.

22 Q. And highly reputable businessmen, right?

23 A. Yes.

24 Q. And up until October 2005, you would characterize  
25 Mr. Bennett as the single-most impressive businessman you have

CABPCOL4B

Schoen - cross

1 ever met in your life, correct?

2 A. As of that time, that was true, in my opinion.

3 Q. Up until that time, in your opinion, he was the most  
4 talented and capable business executive that you had ever dealt  
5 with in your career?

6 A. That was my opinion at the time.

7 Q. And not just impressive in terms of his business  
8 capability, but you felt, up until that time, that he was  
9 impressive in terms of his integrity, correct?

10 A. Yes. I wouldn't have done business with him otherwise.

11 Q. And you felt he was impressive in terms of his honesty,  
12 correct?

13 A. Yes.

14 Q. You were completely convinced of his capabilities, his  
15 integrity and his honesty, correct?

16 A. Yes.

17 Q. And so were your colleagues who were working with you,  
18 correct?

19 MR. LEVY: Objection.

20 MR. BACH: I'll withdraw it.

21 Q. The day that Refco went public with an IPO was a proud day,  
22 correct?

23 A. Yes.

24 Q. Where you and Mr. Bennett went to the floor of the New York  
25 Stock Exchange together on that day, correct?

CABPCOL4B

Schoen - cross

1 A. We did, along with our team.

2 Q. And you and he rang the bell to open the New York Stock  
3 Exchange that day, correct?

4 A. Actually, he rang the bell.

5 Q. He got to ring it, okay.

6 (Continued on next page)

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CABDCOL5

Schoen - cross

1 Q. Mr. Schoen, let me show you what have been marked for  
2 identification as Defense Exhibit 216 and Defense Exhibit 219.

3 You recognize those, sir, correct?

4 A. Yes.

5 MR. BACH: We offer them.

6 MR. LEVY: No objection.

7 THE COURT: Received.

8 (Defendant's Exhibits 216 and 219 received in  
9 evidence)

10 MR. BACH: Ms. O'Connor, would you put Exhibit 216 up  
11 on the board?

12 Q. That is a picture of that morning on the floor of the New  
13 York Stock Exchange, correct?

14 A. That's correct.

15 Q. Who do we see here, Mr. Schoen?

16 A. George Taylor is on the left, Scott Jaeckel on the right,  
17 and then myself and Mr. Bennett in the middle.

18 Q. And could we see -- Ms. O'Connor, could you blow up Exhibit  
19 219.

20 This is a picture of the same day, correct?

21 A. Yes.

22 Q. OK. And you understood, Mr. Schoen, that having the  
23 principal of Thomas H. Lee, in fact, having yourself stand next  
24 to Mr. Bennett, gave him credibility, correct?

25 A. I hadn't thought of it that way, but, sure, yes, it does.

CABDCOL5

Schoen - cross

1 I hope so.

2 Q. And while working with him up until October 2005, during  
3 the period in which you thought he was the most impressive  
4 businessman you had ever met, you and he put a prospectus  
5 together for this initial public offering, correct?

6 A. Refco management and ourselves did put a prospectus  
7 together, which I think I testified to earlier.

8 Q. And it turned out that that prospectus contained a lot of  
9 false statements about Refco's financial health, correct?

10 A. Yes, I believe so.

11 Q. And you did not realize that at the time, correct?

12 A. No.

13 Q. And you and Thomas H. Lee worked with Refco to put those  
14 documents together, right?

15 A. Yes.

16 Q. And you had no idea that they were false, right?

17 A. That's correct.

18 Q. You had no inkling that they contained any lies?

19 A. I wouldn't have signed the registration statement if I  
20 thought it wasn't true.

21 Q. And he was using your reputation, Thomas H. Lee's  
22 reputation to put that paperwork together?

23 A. I don't know how to respond to that question.

24 Q. You worked with him on the board, right?

25 A. Yes.

CABDCOL5

Schoen - cross

1 Q. He was the CEO, correct?

2 A. Yes.

3 Q. He represented --

4 THE COURT: Counsel, we get the idea.

5 MR. BACH: OK.

6 Q. Is it fair to say, Mr. Schoen, that your association with  
7 Mr. Bennett has in the end proven unpleasant?

8 A. Yes.

9 MR. BACH: I have no further questions.

10 THE COURT: Thank you.

11 How long?

12 MR. LEVY: Probably five minutes or so.

13 THE COURT: All right. We will do the five minutes  
14 and then take a break.

15 Is that all right, ladies and gentlemen?

16 Thank you, counsel.

17 REDIRECT EXAMINATION

18 BY MR. LEVY:

19 Q. Mr. Schoen, you talked for a moment on cross-examination  
20 about lawsuits that were filed in the wake of this collapse, is  
21 that right?

22 A. Yes.

23 Q. You mentioned that Thomas H. Lee and you yourself  
24 personally had been sued, is that right?

25 A. Yes.

Cabdc015

Schoen - redirect

1 Q. Did Thomas H. Lee Partners also sue others?

2 A. Yes, we did.

3 Q. You mentioned that there were settlements in which Thomas  
4 H. Lee had to make payments, right?

5 A. Yes.

6 Q. Were there settlements in which Thomas H. Lee Partners  
7 received payments?

8 A. Yes, there were.

9 Q. As you sit here today, are there lawsuits still pending  
10 against you?

11 A. All of the lawsuits have been resolved.

12 Q. Do you have any financial interest in how this case works  
13 out at all?

14 A. None whatsoever.

15 Q. You talked during your cross-examination about this  
16 telephone conversation that you had with Phillip Bennett in  
17 June of 2004 in which you asked him for the Reader's Digest  
18 version of where the money was going to go, is that right?

19 A. Yes.

20 Q. You wanted I think you said a businessman's overview of  
21 where the money was going, correct?

22 A. That's correct.

23 Q. And that was the conversation in which Mr. Bennett told you  
24 that Mr. Grant would be getting \$800 million, is that right?

25 A. That is correct.

Cabdc015

Schoen - redirect

1 Q. And ultimately you were comfortable not getting the  
2 documentation on that, is that right?

3 A. Yes.

4 Q. You were told about it, is that right?

5 A. That's correct.

6 Q. In that conversation I believe there was a discussion of  
7 how much Mr. Dittmer, who was a former owner of Refco, would be  
8 getting out of this -- out of the proceeds, is that right?

9 A. Yes, that's correct.

10 Q. And what was the number again? What did Mr. Bennett tell  
11 you Mr. Dittmer was going to be getting?

12 A. I believe it was between 75 and \$100 million.

13 Q. I think you testified on direct examination that although  
14 you weren't told what percentage that was, what percentage  
15 Mr. Dittmer was entitled to, you had sort of a rough idea in  
16 your head what percentage it must be given the numbers you were  
17 told?

18 A. Given the math, I thought it was less than 10 percent.

19 Q. If you had known at that point that Mr. Dittmer had a  
20 contractual right to 25 percent of the proceeds, would that \$75  
21 million have made any sense to you?

22 A. It would not.

23 Q. Why not?

24 A. Because that would have implied that the whole business was  
25 worth \$300 million.

Cabdc015

Schoen - redirect

1 Q. What would your question have been if you found out that  
2 Mr. Dittmer was entitled to 25 percent of the total proceeds  
3 but was only getting \$75 million?

4 A. It would have made it apparent that everything we had been  
5 told wasn't true; the numbers didn't add up.

6 Q. Now, you didn't ask for the documents with respect to what  
7 Mr. Dittmer was going to be paid, is that right?

8 A. No.

9 Q. But you did ask the question and you were told about, is  
10 that right?

11 A. Yes.

12 Q. You mentioned a loan -- in the same conversation,  
13 Mr. Bennett told you about a loan that was going to be paid  
14 back to BAWAG, is that right?

15 A. That is correct.

16 Q. What did he tell you about when that loan had been made?

17 A. He told us it had been made in 1999, when he and Mr. Grant  
18 acquired the business from Mr. Dittmer.

19 Q. Who had the money been loaned to, according to Mr. Bennett?  
20 Was the loan to Refco or RGHI?

21 A. No. That was a loan to RGHI, his holding company, he told  
22 us, so that his holding company could make the investment and  
23 acquire the stock of Refco.

24 Q. This is what he told you, is that right?

25 A. That's right. It is what he told us.

Cabdc015

Schoen - redirect

1 Q. Had you ever seen anything to suggest whether or not that  
2 is true?

3 A. No. I don't know what is true anymore in this case.

4 Q. That loan was not -- withdrawn.

5 It was clear that was something relating to 1999;  
6 that's what you were told?

7 A. That's what we were told.

8 Q. And it was a loan; is that what you were told?

9 A. That's correct.

10 Q. Mr. Bennett did not tell you on that conversation about a  
11 2002 Proceeds Participation Agreement in which a BAWAG-related  
12 entity made an investment in Refco, is that right?

13 A. That's correct. He did not.

14 Q. This loan we are talking about is something completely  
15 different from that?

16 A. Completely different.

17 Q. You didn't ask for the documentation on that loan that  
18 Mr. Bennett told you existed from BAWAG, is that right?

19 A. That's correct.

20 Q. But he told you about it. You knew about it. You  
21 discussed it with him.

22 Is that right?

23 A. Yes.

24 Q. OK. These were the things that were -- this is what  
25 prompted you to have the conversation to find these things out,

Cabdc015

Schoen - redirect

1 is that right?

2 A. Again, the focus was on what his proceeds ultimately would  
3 be as our partner, how much money he was taking out and how  
4 much money he was investing back into the company.

5 Q. And these are the things that you were told, that knowing  
6 about them, having been told about them, you were comfortable  
7 not getting the documentation?

8 A. That's correct.

9 Q. Nobody at any point ever told you about a Proceeds  
10 Participation Agreement in which a BAWAG-related entity made a  
11 \$400-plus-million investment in exchange for participating in  
12 the proceeds of the sale, is that right?

13 A. Not until after the bankruptcy.

14 Q. OK. Finally, I think you testified on cross-examination  
15 that the best you could do was speculate about the impact on  
16 the deal if you had known of the PPA at the time, if it had  
17 been disclosed, is that right?

18 A. That's correct.

19 Q. Is it clear to you that it's something that would have been  
20 significant to you?

21 MR. BACH: Objection. Leading.

22 Q. Would it have been significant to you if you had known  
23 about it -- let me see if I can be clearer in my question.

24 Was your testimony that you didn't know whether or not  
25 it would have changed the deal, tanked the deal, ended the



Cabdc015

Schoen - redirect

1 deal; is that what you meant by your testimony or not?

2 MR. BACH: Objection, Judge.

3 THE COURT: Sustained.

4 Q. What did you mean by -- let me just ask you: Would it have  
5 mattered to you to know about the PPA?

6 A. I believe it would have mattered greatly. I testified  
7 earlier today that there were a number of reasons why I believe  
8 it would have mattered greatly. Both the infusion of hundreds  
9 of millions of dollars into Refco that I was unaware of would  
10 have changed our view about the financial performance of Refco.  
11 The fact that we had been lied to on something of -- really  
12 lied to about anything, but lied to about something very  
13 important and large a transaction would have mattered a lot.  
14 And then some of the terms of that PPA, which I subsequently  
15 read, I believe, and I testified earlier, would have been very  
16 important to me. But, again, it is speculation because I  
17 didn't have it at the time. I don't know what would have  
18 happened.

19 MR. LEVY: I have no further questions, your Honor.

20 THE COURT: Thank you.

21 Recross. How long?

22 MR. BACH: Extremely brief.

23 THE COURT: Go.

24 MR. BACH: But I have to find it.

25 THE COURT: What?

Cabdc015

Schoen - redirect

1 MR. BACH: One second.

2 (Pause)

3 RECROSS-EXAMINATION

4 MR. BACH: I refer the government to the proceeding  
5 May 20, 2009, page 1011 to 1012.

6 (Counsel conferred)

7 BY MR. BACH:

8 Q. Mr. Schoen, you testified in a prior proceeding in this  
9 matter on May 20, 2009, correct?

10 A. I don't recall but I am sure you can refresh my memory.

11 Q. You recall testifying at a prior proceeding in this matter,  
12 you just don't recall the date?

13 A. That's correct.

14 Q. And you have no reason to doubt it was on May 20, 2009,  
15 correct?

16 A. Correct.

17 Q. And you testified under oath, correct?

18 A. Yes.

19 Q. And, sir, you testified under oath that -- well, you were  
20 asked questions about the PPA in that proceeding, correct?

21 A. Again, I don't recall.

22 Q. OK. But you testified under oath, "It is quite possible  
23 that it would ultimately have no impact on our view of the  
24 transaction, but without actually being aware of it, we  
25 couldn't even make that judgment."

Cabdc015

Schoen - recross

1 MR. LEVY: Your Honor, I'm not sure it is at all clear  
2 what the "it" is that Mr. Bach just read.

3 THE COURT: Generally we do Q/A, Q/A.

4 MR. BACH: OK.

5 BY MR. BACH:

6 Q. Let me read to you -- sir, in a prior proceeding, on or  
7 about May 20, 2009, were you asked this question and did you  
8 give this answer, under oath?

9 "Q Why would it have been important to know that an entity had  
10 the right to block the sale if it was below the purchase price  
11 regardless of what that minimum purchase price was?

12 "A Well, it could have had an impact on our view of the  
13 negotiation of the transaction and our understanding of the  
14 parties' needs and objectives and who was pulling the strings,  
15 but it also just would have been important to understand what  
16 the history was that led to those arrangements. It's quite  
17 possible that it would ultimately have no impact on our view of  
18 the transaction, but without actually being aware of it, we  
19 couldn't even make that judgment."

20 Were you asked that question and did you give this  
21 answer?

22 A. I believe so.

23 MR. BACH: No further questions.

24 THE COURT: Any redirect?

25 MR. LEVY: No. Thank you, your Honor.

Cabdc015

Schoen - recross

1 THE COURT: You may step down, sir. Thank you.

2 (Witness excused)

3 THE COURT: Ladies and gentlemen, let's take a quick  
4 break. Would you follow the normal instructions: Exhibits on  
5 the chairs. Books in your room. Please don't discuss the case  
6 or do any research. See you in a couple of minutes.

7 Thank you for your attention.

8 (Jury not present)

9 THE COURT: Anything else on the record, counsel?

10 MR. LEVY: Nothing, your Honor.

11 THE COURT: Off the record.

12 (Discussion off the record)

13 (Recess)

14 (Jury present)

15 THE COURT: And won't you be seated.

16 We continue with the government's case.

17 MR. IMPERATORE: Your Honor, the government calls  
18 Russell Schaub.

19 THE COURT: Thank you.

20 Sir.

21 RUSSELL SCHAUB,

22 called as a witness by the government,

23 having been duly sworn, testified as follows:

24 THE CLERK: Please be seated.

25 State your full name and spell your last name slowly

Cabdc015

1 for the record.

2 THE WITNESS: Russell Schaub, S-c-h-a-u-b.

3 DIRECT EXAMINATION

4 BY MR. IMPERATORE:

5 Q. Good afternoon, Mr. Schaub.

6 A. Good afternoon.

7 Q. Where do you live?

8 A. I live in Port Washington in New York.

9 Q. Mr. Schaub, what do you do for a living?

10 A. I'm an investment manager.

11 Q. Do you personally invest in the stock market?

12 A. I do.

13 Q. How long have you been doing that?

14 A. For over 25 years.

15 Q. When investing in the stock market, what types of  
16 information do you rely upon in making your investment  
17 decisions?

18 A. Well, I typically go online and read Wall Street Journal,  
19 New York Times, Barron's, other publicly-available information,  
20 except when I am investing in initial public offerings in which  
21 case I will look at the company's prospectus.

22 Q. Mr. Schaub, what is an initial public offering?

23 A. An initial public offering is when a company is privately  
24 held but then it makes a determination that it wants to offer  
25 additional shares or sell certain shares to the general public.

Cabdc015

Schaub - direct

1 Q. And what is a prospectus?

2 A. A prospectus is a line of financial information and  
3 management text that describes -- it is produced by the  
4 corporation, and it describes the company's line of business,  
5 its target market. It has a lot of financial information,  
6 revenues of the company, expenses of the company and then its  
7 projections and balance sheet information. It also describes  
8 the opportunities that the company sees as well as risks for  
9 the investment.

10 Q. Mr. Schaub, when investing in an initial public offering,  
11 why do you rely upon a prospectus?

12 A. Well, the company is trying to raise significant amounts of  
13 money, and it's produced by the company and it's stating here's  
14 what we're trying to do as a business and with your money. And  
15 it also provides financial information that is produced by that  
16 same company. And it is the most accurate source of  
17 information that is out there.

18 Q. Specifically, what kinds of financial information do you  
19 look at when you are reviewing and relying on a prospectus?

20 A. Well, the financial information will be historical income  
21 statements and balance sheets of the company. The income  
22 statement has the revenues of the company and as well as the  
23 expenses of the company and the income of the company.  
24 Revenues minus expenses is the income. And then it provides  
25 the balance sheet, which is the assets and liabilities of the

Cabdc015

Schaub - direct

1 company.

2 Q. Mr. Schaub, did you purchase in an initial public offering  
3 of Refco?

4 A. Yes, I did.

5 Q. Was that in August of 2005?

6 A. It was.

7 Q. And what exactly was being offered to investors in that  
8 initial public offering?

9 A. Well, Refco was offering up shares of its company. If you  
10 buy shares in an initial public offering it is like owning a  
11 little piece of the company, and it was being made available to  
12 the general public.

13 Q. How did you first become interested in Refco?

14 A. I was notified through my stockbroker, Charles Schwab.

15 Q. What's Charles Schwab?

16 A. Charles Schwab is a stockbroker. When individuals want to  
17 buy or sell shares, equities in companies, it's difficult to do  
18 it by themselves; they go through a stockbroker. And you tell  
19 the stockbroker I want to buy a certain amount of shares. You  
20 have your money in an account, they take the money and they  
21 exchange it for shares. They are providing transaction  
22 services for you.

23 Q. What does one do to become a Charles Schwab customer?

24 A. Well, you typically have to authenticate yourself, show  
25 some type of identification that you are who you say you are,

Cabdc015

Schaub - direct

1 and then send in a check. That check clears, there is money in  
2 your account, and then you are free to buy and sell shares.

3 Q. Now, at the time that you first learned of Refco through  
4 Charles Schwab, what business did you understand Refco to be  
5 involved in?

6 A. Well, they were providing transaction services for large  
7 corporations and large hedge funds. They were providing  
8 clearinghouse services to the exchange -- to exchange-traded  
9 derivatives. They were providing services that helped  
10 corporations and hedge funds manage their risk.

11 Q. When you say "clearinghouse services," what do you mean by  
12 that?

13 A. They were handling the transaction. Just like Charles  
14 Schwab for me as an individual broker was handling a  
15 transaction, Refco was handling foreign exchange transactions,  
16 forward contracts for corporations that would enable the  
17 corporations to trade up with counterparties, but they were  
18 handling the transaction, not necessarily taking the risk of  
19 the transaction.

20 Q. And before you made a decision to invest in Refco, did you  
21 receive any information about Refco?

22 A. Yes. I received their prospectus.

23 Q. Mr. Schaub, would you please take a look at what's been  
24 marked as Government Exhibit 5009?

25 A. Yes.



Cabdc015

Schaub - direct

1 MR. IMPERATORE: Mr. Smith, if you could pull that up,  
2 please.

3 Q. Do you recognize this document?

4 A. I do.

5 Q. What is this?

6 A. This is the prospectus that I reviewed on Refco prior to my  
7 public offering.

8 MR. IMPERATORE: The government offers 5009.

9 MR. SCHWARTZ: No objection.

10 THE COURT: Received.

11 (Government's Exhibit 5009 received in evidence)

12 BY MR. IMPERATORE:

13 Q. Now, I would like to focus on the first page of this  
14 prospectus.

15 Mr. Smith, if we could please highlight the first  
16 paragraph, and blow that up.

17 What was the price at which the stock was being  
18 offered?

19 A. \$22 per share.

20 Q. Now, if we could take a look down at the bottom of this  
21 first page, if we could blow up the bottom half, what was --  
22 this prospectus is dated August 10th of 2005, is that correct?

23 A. Yes.

24 Q. And when you received this prospectus, did you focus on any  
25 particular portions of it?

Cabdc015

Schaub - direct

1 A. Yes. I focused on the sections pertaining to the business  
2 strategy of the company, its lines of business. I focused on  
3 the income statements of the business, which were the revenues  
4 and expenses, and net operating income of their business. I  
5 focused on the balance sheet. And I focused on the sections of  
6 the report detailing what they perceived as their opportunities  
7 as well as the risks of the investment.

8 Q. Let's turn now to page 1 of this prospectus.

9 If we could please blow up the first paragraph.

10 Here it says -- there is a heading that says  
11 "Prospectus Summary" and below that another heading that says  
12 "Our Company." Correct?

13 A. Yes.

14 Q. I am going to read a portion of the section below "Our  
15 Company."

16 Mr. Smith, if you could please blow up that paragraph.

17 It says here: "We are a leading independent provider  
18 of execution and clearing services for exchange-traded  
19 derivatives and a major provider of prime brokerage services in  
20 the fixed income and foreign exchange markets."

21 Now, Mr. Schaub, does that accurately describe what  
22 you understood Refco's business to be?

23 A. Yes, it does.

24 Q. Could you describe sort of in plain English what that  
25 means?

Cabdc015

Schaub - direct

1 A. Sure. This was taking place in 2005. In the late '90s and  
2 early 2000s, there was a lot of big corporate growth,  
3 globalization, and corporations needed to manage their risk for  
4 foreign exchange purposes. They were borrowing lots of money.  
5 So there were a lot of fixed income products and currency. So  
6 what Refco would provide is the transaction services that  
7 enabled corporations to manage that part of their business.

8 Q. Now, I think you said a moment ago that you rely on  
9 financial information when making investment decisions, is that  
10 right?

11 A. Yes.

12 Q. Did financial information about Refco appear in this  
13 prospectus?

14 A. It did.

15 Q. If we could turn to page 3 of this prospectus, please.

16 Midway down the page, there is a heading that says  
17 "Our Business." If we could blow that up, please?

18 Below that, there is a heading that says "Derivatives  
19 Brokerage & Clearing."

20 Now, if we could just turn to the top of the very next  
21 page, please, which is a continuation of this section.

22 Mr. Smith, if you could highlight the very first sentence of  
23 this page. Thank you.

24 It says here: "From fiscal year 2000 through fiscal  
25 year 2005, our derivatives brokerage & clearing net revenues

Cabdc015

Schaub - direct

1 and operating profit have grown at compound annual growth rates  
2 of 24.3 percent and 33.3 percent, respectively."

3 Do you see that, Mr. Schaub?

4 A. I do.

5 Q. When you made your investment decision, did you rely on  
6 this section?

7 A. I did.

8 Q. And what significance did it have for you?

9 A. Well, for one thing, this growth rate over this five/six  
10 year period is extraordinarily high.

11 Two, it's great to have revenues growing fast. It  
12 means there are clients who actually want to buy your products  
13 and your services. But, you know, sometimes you see companies  
14 that have rapid revenue growth but their income isn't growing.  
15 It means that they're spending lots of money to generate that  
16 revenue. In this case, revenues are growing really, really  
17 fast but their profits are growing even faster, which means  
18 they only have to spend, let's say, one dollar to generate \$2,  
19 as opposed to spending \$3 to get \$2, which means revenue is  
20 growing but your income is going down. So the fact that profit  
21 was growing even faster but both numbers were high was a great  
22 thing.

23 Q. Now, let's take a look at the next section on page 4, the  
24 same page. It's called, "Prime Brokerage/Capital Markets." At  
25 the bottom it says here, "From fiscal year 2000" -- I'm sorry,

Cabdc015

Schaub - direct

1 Mr. Smith, if you could please expand this?

2 "From fiscal year 2000 through fiscal year 2005, our  
3 prime brokerage/capital markets net revenues operating profit  
4 have grown at compound annual growth rates of 26.0 percent and  
5 38.2 percent, respectively."

6 Do you see that, Mr. Schaub?

7 A. I do.

8 Q. Did you review this information when you looked at the  
9 prospectus?

10 A. I did.

11 Q. And did you rely on it?

12 A. I did.

13 Q. What significance did this section have for you?

14 A. Well, similarly, the prospectus described two key  
15 businesses of Refco. And just like the first one, this second,  
16 which is their prime brokerage business, revenues were growing,  
17 revenues were growing extraordinarily fast over a sustained  
18 five-year period, but even more importantly the income was  
19 growing even faster.

20 Q. If we could take a look now at page 59 of this prospectus.

21 Mr. Schaub, what appears on this page of the document?

22 A. This is the income statement. It's the revenues and  
23 expenses of the company broken down by their lines of business.

24 Q. And when you were deciding whether to invest, did you  
25 review the information contained on this page?

Cabdc015

Schaub - direct

1 A. I did.

2 Q. And does this table convey some of the financial  
3 information that we talked about a few moments ago?

4 A. Yes, it does.

5 Q. Did you rely on the information that's contained in this  
6 table?

7 A. I did.

8 Q. Now, from reviewing this prospectus, what conclusions did  
9 you draw, if any, about the financial condition of Refco?

10 A. That it was profitable. It was profitable over a multiyear  
11 period. That its revenues were growing and its income was  
12 growing. It seemed that it was -- that the financial results  
13 were stable and growing. It would be an ongoing concern. And  
14 that, coupled with the lines of business it was in, made it an  
15 attractive investment.

16 Q. If we could turn now to page 117.

17 Mr. Smith, if you could focus on the top half of this,  
18 please.

19 This is a section with a heading that reads "Certain  
20 Relationships and Related Party Transaction," is that right?

21 A. Yes.

22 Q. Did you review this section when you looked at this  
23 prospectus?

24 A. I did.

25 Q. What did you use this section of the prospectus for?

Cabdc015

Schaub - direct

1 A. Well, this is another part of the prospectus that puts the  
2 detailed risks of the investment. I prefer not to invest in a  
3 company that has material related-party transactions.  
4 Related-party transactions means that the senior officer of the  
5 company or someone on the board besides having a position with  
6 Refco has a position with another company that Refco is doing  
7 business with.

8 And you prefer to make investments in companies where  
9 their revenue is being generated by doing business with third  
10 parties, where there is no conflict of interest or possible  
11 conflict of interest. If you have a relationship with a  
12 related party, the related party may favor this other business  
13 in the contract that's being negotiated, and so that could be a  
14 risk.

15 Q. What conclusions did you draw about Refco from reviewing  
16 this section?

17 A. I read it and I did not see any material risks here.

18 Q. And, now, were the representations made in this section  
19 important to you?

20 A. They were.

21 Q. Why is that?

22 A. Well, because I was reading the prospectus not just to see  
23 about the lines of business but to see what were the risks of  
24 the business, and one of the risks could be some improper  
25 related-party transaction.

Cabdc015

Schaub - direct

1 Q. Now, at the time that you were reviewing this prospectus,  
2 were you aware that a related party actually owed Refco  
3 hundreds of millions of dollars?

4 A. No, I was not.

5 Q. Is that disclosed in this prospectus?

6 A. No, it's not.

7 Q. In considering whether to invest, is that something that  
8 would have been important for you to know?

9 A. Absolutely.

10 Q. Why is that?

11 A. As I said, it is a huge potential conflict of interest.

12 Q. And at the time that you reviewed this prospectus, were you  
13 aware that Refco had guaranteed hundreds of millions of dollars  
14 in loans made by a third party to a related party of Refco?

15 A. No, I was not.

16 Q. Is that disclosed in this prospectus?

17 A. No, it is not.

18 Q. In considering whether to invest, is that something that  
19 would have been important to you?

20 A. Yes, it would have been.

21 Q. And why is that?

22 A. Well, similarly, that's a huge potential conflict of  
23 interest. You would never want to expose yourself to that type  
24 of exposure as an investor.

25 Q. Now, there came a time when you invested in Refco, is that



Cabdc015

Schaub - direct

1 correct?

2 A. Yes.

3 Q. How did you go about making your investment?

4 A. I made that investment through my stockbroker, Charles  
5 Schwab.

6 Q. Mr. Schaub, I would like you to take a look at what's been  
7 marked as Government Exhibit 10A.

8 Mr. Smith, if you could pull that up, please.

9 I'm sorry. Do you have that in front of you, Mr.

10 Schaub?

11 A. I have the paper version, yes.

12 Q. OK. Do you recognize this document?

13 A. Yes, I do.

14 Q. And what is it?

15 A. This is my transaction statement from Charles Schwab for  
16 the purchase of shares in Refco.

17 MR. IMPERATORE: The government offers 10A.

18 MR. SCHWARTZ: No objection.

19 THE COURT: Received.

20 (Government's Exhibit 10A received in evidence)

21 BY MR. IMPERATORE:

22 Q. Mr. Smith, if you could please bring forward the middle  
23 section? Thank you.

24 Now, is this a statement, Mr. Schaub, that you  
25 received directly from Charles Schwab?

Cabdc015

Schaub - direct

1 A. Yes.

2 Q. And does this accurately reflect your investment in Refco?

3 A. Yes, it does.

4 Q. Let's take a look beginning at the left side of the chart.

5 Mr. Smith, if you could please highlight the name  
6 "Refco Inc."

7 Mr. Schaub, is this the Refco that you invested in in  
8 2005?

9 A. Yes, it is.

10 Q. Now, if we take a look about two columns over, there is a  
11 column called "Bought" and a symbol "RFX." Do you see that?

12 A. Yes.

13 Q. What is RFX?

14 A. RFX is the -- it is called a ticker symbol. Refco traded  
15 on the New York Stock Exchange. Most companies, if not all  
16 companies, on the Stock Exchange had a three-letter ticker.  
17 That was the abbreviated form of Refco, RFX.

18 Q. Now, directing your attention to the next column, it says  
19 "Trade Date 8/10/05." Do you see that?

20 A. Yes, I do.

21 Q. What is that date?

22 A. That is the date that I agreed to purchase the 200 shares  
23 of Refco.

24 Q. And underneath that there is an entry that says "Settlement  
25 Date" 8/16 of '05. Do you see that?

Cabdc015

Schaub - direct

1 A. Yes, I do.

2 Q. What does that date signify?

3 A. That's the date where Charles Schwab took the cost of the  
4 200 shares -- in this case, \$4,400 -- and in exchange sent me  
5 an electronic certificate for 200 shares of Refco.

6 Q. Now, drawing your attention to the next row. The quantity  
7 noted here is 200. Is that the number of shares that you  
8 purchased?

9 A. Yes, it is.

10 Q. And the price is \$22, is that correct?

11 A. Yes.

12 Q. So at the end of the row, what is the total purchase price  
13 of your shares?

14 A. \$4,400.

15 Q. And, by the way, when you decided to invest, how many  
16 shares of Refco did you initially try to purchase?

17 A. Probably a thousand shares.

18 Q. And were you ultimately able to purchase a thousand?

19 A. No. There was so investor demand, the company was viewed  
20 as so attractive they had more people wanting to buy the shares  
21 than they were offering to the public.

22 Q. Now, after you invested in Refco, did you keep an eye on  
23 your investment?

24 A. Yes, I did.

25 Q. How did you do that?

Cabdc015

Schaub - direct

1 A. Well, it's quite easy through that ticker RFX, going online  
2 and typing that in, the results are in the newspapers, Wall  
3 Street Journal, New York Times every day.

4 Q. What was your view of how Refco's stock performed  
5 initially?

6 A. Well, initially the stock performed great. That same day  
7 that I bought the shares, it closed up 25 percent. So my \$4400  
8 turned into over \$5,000 in one day. So, one, I was happy.  
9 Two, I was a little disappointed I didn't get the thousand  
10 shares. I was feeling good that I had made the right  
11 investment decision.

12 Q. Did there come a time in October 2005 when Refco made a  
13 public announcement?

14 A. Yes.

15 Q. And what was that announcement?

16 A. They disclosed this related-party transaction about that,  
17 the debt, the \$400 million of debt, and the stock price just  
18 plummeted.

19 Q. Was that something that you had seen anything about in the  
20 prospectus?

21 A. No.

22 Q. And when the price of your stock plummeted, did you still  
23 have all of your shares?

24 A. Yes, I did.

25 Q. Did there come a time -- I'm sorry. Withdrawn.

Cabdc015

Schaub - direct

1           Mr. Schaub, were you ever able to sell your stock in  
2 Refco?

3 A. Yes.

4 Q. And you had bought it at \$22 a share, is that correct?

5 A. Correct.

6 Q. I'd like you to take a look at what's in front of you as  
7 Government Exhibit 10B. Do you recognize this document?

8 A. Yes, I do.

9 Q. And what is Government Exhibit 10B?

10 A. This is a similar transaction statement from my stockbroker  
11 Charles Schwab, only it represents when I sold my 200 shares of  
12 Refco.

13 MR. IMPERATORE: The government offers 10B.

14 MR. SCHWARTZ: No objection.

15 THE COURT: Received.

16 (Government's Exhibit 10B received in evidence)

17 MR. IMPERATORE: Mr. Smith, if you could please pull  
18 forward the middle part of this document? Thank you.

19 Q. Mr. Schaub, just directing your attention to the left side  
20 here. You see the name "Refco Inc." Is that the company whose  
21 shares that you sold?

22 A. Yes.

23 Q. And if we move a couple of columns over, we see the column  
24 "Sold" with the symbol "RFXCQ." Do you see that?

25 A. Yes, I do.

Cabdc015

Schaub - direct

1 Q. What is RFXCQ?

2 A. Well, that, similarly, is the transaction ticker for Refco,  
3 but the New York Stock Exchange, like other exchanges, has  
4 rules on companies that can be listed on the Exchange. And one  
5 of those, the stock price can't go below a certain number; and,  
6 two, it has to be deemed as a viable going concern, which means  
7 they expect the company to remain in business. Since the stock  
8 price was now below a dollar and they no longer viewed Refco as  
9 a business that was an ongoing concern, it was delisted from  
10 the Stock Exchange and its ticker was changed.

11 Q. Does that mean it was no longer trading on the Stock  
12 Exchange?

13 A. You were able to sell the securities but not through the  
14 main New York Stock Exchange.

15 Q. Now, if we go to the next column over, we see "Trade Date  
16 4/26/06." What does that date signify?

17 A. That's the date when I entered into my agreement to sell  
18 the 200 shares that I held.

19 Q. And immediately below that we see "Settlement Date  
20 5/01/06." What is the significance of that date?

21 A. That's when my stockbroker Charles Schwab took the 200  
22 shares away from me and in exchange I received the cash for  
23 those shares.

24 Q. Now, if we go to the next row below, we see the quantity,  
25 200. Is this the amount of shares that you sold?

Cabdc015

Schaub - direct

1 A. Yes.

2 Q. And the next column over, it says "Price," 50 cents?

3 A. Correct.

4 Q. What does that signify?

5 A. That's the price that I sold each share at. So I had  
6 bought the shares for \$22; I was selling each one a few months  
7 later for 50 cents.

8 Q. And then the next column over we see "Principal \$100." Do  
9 you see that?

10 A. Yes, I do.

11 Q. And what does that signify?

12 A. That's how much cash I sold the shares for. I had paid  
13 \$4,400 for them, and a few months later I received \$100 back.

14 Q. But did you take away \$100 from the sale of your Refco  
15 shares?

16 A. No. I still had to pay my stockbroker, Charles Schwab, for  
17 handling the sale. So that took away \$90.

18 Q. So was your net loss about \$4,300?

19 A. Yes.

20 Q. Mr. Schaub, what was your reaction to having lost this  
21 money?

22 A. Well, I was angry, very angry. It's one thing to invest  
23 and make a mistake or for markets to turn out a little bit  
24 differently than you anticipated, but in this case I lost an  
25 enormous sum of money for me not because I made a wrong

Cabdc015

Schaub - direct

1 decision but because it appeared like there was massive fraud  
2 in the company. Basically, someone stole my money.

3 MR. IMPERATORE: I have no further questions, your  
4 Honor.

5 THE COURT: Thank you.

6 Cross-examination, please.

7 CROSS-EXAMINATION

8 BY MR. SCHWARTZ:

9 Q. Good afternoon, Mr. Schaub.

10 A. Good afternoon.

11 Q. You don't know Joe Collins, correct?

12 A. Correct.

13 MR. SCHWARTZ: No further questions.

14 THE COURT: Thank you.

15 No redirect, I don't guess?

16 MR. IMPERATORE: No, your Honor.

17 THE COURT: Thank you.

18 You may step down, sir. Thank you.

19 (Witness excused)

20 MR. CHERNOFF: Your Honor, the government calls  
21 Francisco Duque.

22 THE COURT: Thank you.

23 (Pause)

24 Come right on in, sir. Step up.

25 FRANCISCO DUQUE,



Cabdc015

1 called as a witness by the government,

2 having been duly sworn, testified as follows:

3 THE CLERK: Please be seated.

4 State your full name for the record and spell your  
5 last name.

6 THE WITNESS: Francisco Duque, D-u-q-u-e.

7 THE COURT: Thank you.

8 Mr. Chernoff.

9 MR. CHERNOFF: Thank you, your Honor.

10 DIRECT EXAMINATION

11 BY MR. CHERNOFF:

12 Q. Good afternoon, Mr. Duque.

13 A. Good afternoon.

14 Q. Sir, where do you work?

15 A. I work for a company called Bessemer Trust.

16 Q. Could I ask you if you could pull your chair a little  
17 closer to the microphone so that I can hear you. Thank you.

18 And what do you do at Bessemer Trust, sir?

19 A. I am an investment analyst in the equities department.

20 Q. Equities meaning you research stocks?

21 A. Correct, yes.

22 Q. I want to turn back to the year 2005.

23 Where were you working at that time?

24 A. I worked for a company called TIAA-CREF.

25 Q. That's T-I-A-A dash C-R-E-F?

Cabdc015

Duque - direct

1 A. Yes.

2 Q. And, sir, what does that stand for?

3 A. It's called the Teachers Insurance and Annuity in the  
4 College Retirement Equities Fund.

5 Q. And, sir, what does TIAA-CREF do?

6 A. It is a company that manages pension money for  
7 universities, hospitals, and some government entities.

8 Q. When you say it manages pension funds, those are for any  
9 employees of universities, hospitals or government agencies  
10 that work with TIAA-CREF?

11 A. Yes.

12 Q. And what was your job at TIAA-CREF in 2005?

13 A. I was also an equities analyst there analyzing investments  
14 in the financial services industry.

15 Q. In making -- in analyzing stocks, are you making  
16 recommendations to your employer as to what stocks to invest  
17 pension money in?

18 A. Yes. That was part of the job, yes.

19 Q. And what are the factors that you consider and evaluate in  
20 deciding to make these pension investments?

21 A. The financial health of the company, the prospects for  
22 growth, the industry they operate in, profitability. Those are  
23 some of the main factors.

24 Q. Did there come a time when TIAA-CREF invested in the  
25 initial public offering of Refco?

Cabdc015

Duque - direct

1 A. Yes.

2 Q. And did you work on that investment decision with  
3 TIAA-CREF?

4 A. I did, yes.

5 Q. What was your role in the decision making process?

6 A. I did some analysis of the company based on their  
7 prospectus at the time before the company went public and  
8 looked at the financial statements, analyzed the industry --  
9 the business discussion that they presented there, and we had a  
10 meeting with the management of the company. And then based on  
11 all those -- on those factors, we decided to make an investment  
12 in the company.

13 Q. Sir, over the course of your career, is it fair to say you  
14 have reviewed hundreds of investments?

15 A. Yes.

16 Q. Also fair to say, sitting here today, you don't remember  
17 specifically reading the Refco prospectus at that time?

18 A. Correct, yes.

19 Q. Is it your practice to always review a prospectus before  
20 you recommended an investment to the pension funds?

21 A. Especially during the IPO process, yes.

22 Q. And what is it you look for when you review prospectuses in  
23 the context of an IPO?

24 A. Primarily the financial statements of the company, the  
25 management discussion about the business, the disclosure about

Cabdc015

Duque - direct

1 the risks associated with the investment and with the  
2 operations of the company. I think those are the three main  
3 areas.

4 Q. Related-party debt, is that something that's important to  
5 you when you consider an investment?

6 A. Yes. It is one of the factors, yes.

7 Q. How is that important?

8 A. If a company has a large asset or a large liability that is  
9 related to one of the members of management or a family member  
10 or somebody who is connected to the company, I think you want  
11 to understand what are the conditions or what are the risks  
12 associated with that related-party position or transaction.

13 Q. Now, as a representative of TIAA-CREF, were you sometimes  
14 also -- did you sometimes also have the opportunity to meet  
15 with senior management before making an investment on behalf of  
16 the pension funds?

17 A. Yes. Frequently, yes.

18 Q. And so you had many such meetings?

19 A. Correct, yes.

20 Q. You are aware from prior statements that you had given that  
21 you had such a meeting with Mr. Bennett, the management from  
22 Refco?

23 A. Yes.

24 Q. And fair to say that sitting here today you no longer  
25 remember what was talked about at that meeting in 2005?

Cabdc015

Duque - direct

1 A. I no longer remember the details, no.

2 Q. Did there come a time when TIAA-CREF made an investment in  
3 Refco's IPO?

4 A. Yes.

5 Q. And after that investment was made, did you monitor it  
6 going forward?

7 A. I did. Yes.

8 Q. And how did you do that?

9 A. It was mainly observing the stock price in the market, and  
10 it would have been also looking at the financial statements and  
11 all the earnings announcements from the company but there  
12 wasn't a lot of time between the IPO and the end of the  
13 process.

14 Q. And after you invested TIAA-CREF's funds in Refco, what was  
15 your initial view of how the company's stock price was doing?

16 A. What I remember is that it performed relatively well  
17 compared to other companies. It was doing well, yes.

18 Q. Did there come a time when the share price of Refco  
19 declined dramatically?

20 A. Yes.

21 Q. And in the time between TIAA-CREF's initial investment and  
22 that drop in the stock price, had TIAA-CREF been buying and  
23 selling shares of Refco from time to time?

24 A. Yes, the company had bought and sold additional shares.

25 Q. After that dramatic drop in the stock price, do you

Cabdc015

Duque - direct

1 remember a time when Refco's stock was suspended from trading?

2 A. Yes, I do.

3 Q. And what does that mean?

4 A. It means that the shares are no longer traded on the Stock  
5 Exchange because there is some irregularity or so that the  
6 company should not be publicly traded.

7 Q. At the time that Refco's stock was suspended, did TIAA-CREF  
8 still own shares of Refco?

9 A. We did, yes.

10 Q. What happened to the value of those shares?

11 A. They had to be written off, written down to zero.

12 Q. Sir, I'm just going to walk up to you what's been marked  
13 for identification as 3526-5. Oh, you have it before you with  
14 that marking, too.

15 And in preparation for your testimony today, did you  
16 receive a document from lawyers for TIAA-CREF?

17 A. I did, yes.

18 Q. And does that document refresh your recollection as to how  
19 much money TIAA-CREF lost on the Refco investment?

20 A. Yes, it does.

21 Q. What was the total amount that TIAA-CREF lost in this  
22 investment?

23 A. \$17.1 million.

24 Q. Finally, Mr. Duque, you don't know Joseph Collins here at  
25 the table, do you?

Cabdcol5

Duque - direct

1 A. I do not.

2 MR. CHERNOFF: No further questions, your Honor.

3 THE COURT: Thank you.

4 Cross-examination, counsel.

5 (Continued on next page)

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Cabdc015

Duque - direct

1 MR. SCHWARTZ: Thank you Mr. Duque. I have no  
2 questions for you.

3 THE COURT: You may step down, sir. Thank you.  
4 Gentlemen?

5 MR. CHERNOFF: Shall we begin with the read back?

6 MR. IMPERATORE: Your Honor, at this point, the  
7 government would read back the prior testimony of Santo Maggio.

8 THE COURT: Thank you. And who's going to --

9 MR. IMPERATORE: And the government calls Jordan  
10 Goodman. Your Honor, the government would suggest a sidebar  
11 just for a moment.

12 MR. CHERNOFF: While the witness goes.

13 THE COURT: Sure. Miss Reporter, if you would,  
14 please.

15 (Continued on next page)

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24  
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Cabdc015

Duque - direct

1 (At the side bar)

2 MR. CHERNOFF: I'm sorry. We forgot to mention this,  
3 but our plan was to offer all the exhibits for this read back  
4 in advance so we can save time and not offer them during the  
5 testimony.

6 MR. SCHWARTZ: We have already consented to that.

7 THE COURT: Cool.

8 MR. CHERNOFF: I just wanted to put that on the  
9 record.

10 MR. SCHWARTZ: And we'll do the same thing before the  
11 cross, and your Honor, we've decided not to use --

12 THE COURT: Different person?

13 MR. SCHWARTZ: We're going to use the same person. It  
14 just makes more sense.

15 THE COURT: Okay. Is this Goodman person -- Off the  
16 record.

17 (Discussion held off the record.)

18 (Continued on next page)

Cabdc015

Duque - direct

1 (In open court)

2 JORDAN R. GOODMAN,

3 called as a witness by the Government,

4 having been duly sworn, testified as follows:

5 THE COURT: Ladies and gentlemen, as you heard at the  
6 outset of the case, we are going to be reading the testimony of  
7 a witness who is deceased. Mr. Goodman is going to be reading  
8 the witness' responses from a prior proceeding. Counsel?

9 DIRECT EXAMINATION

10 BY MR. IMPERATORE:

11 Q. Good afternoon, Mr. Goodman.

12 A. Good afternoon.

13 Q. Mr. Goodman, what do you do for a living?

14 A. I'm a criminal investigator with the U.S. Attorney's Office  
15 in the Southern District of New York.

16 Q. Have you reviewed a transcript of testimony given at a  
17 prior proceeding by Santo Maggio?

18 A. I have.

19 Q. Today I'm going to be reading the questions asked at that  
20 proceeding, and I'd ask that you read Mr. Maggio's answers to  
21 those questions. Is that okay?

22 A. Yes.

23 Q. Okay. Let's begin.

24 "Q. Good afternoon, Mr. Maggio.

25 "A. Good afternoon.

CABPCOL6

Goodman/"Maggio" - direct

1 "Q. Mr. Maggio, how old are you?

2 "A. 57.

3 "Q. Where do you live, Mr. Maggio?

4 "A. Naples, Florida.

5 "Q. What was your highest level of education, Mr. Maggio?

6 "A. Two years of college, but my fourth semester of college I  
7 didn't finish. I withdrew in my fourth semester of college.

8 "Q. Did you graduate?

9 "A. No.

10 "Q. What college did you attend?

11 "A. Hunter College here in Manhattan.

12 "Q. Mr. Maggio, what did you do after you attended Hunter  
13 College?

14 "A. I went to work on Wall Street.

15 "Q. Mr. Maggio, where did you go to work on Wall Street?

16 "A. The first firm I went to work for was Loeb Rhodes.

17 "Q. Approximately when was that, Mr. Maggio?

18 "A. That was on 44 Wall Street.

19 "Q. And approximately when was that, Mr. Maggio?

20 "A. I'm sorry, sir. It was 1971.

21 "Q. When you went to work for Loeb Rhodes, Mr. Maggio, what was  
22 your job?

23 "A. I was working in the -- they called it the cage or the  
24 cashier's department. Basically, it was an area where you  
25 would receive and deliver stock. Back in 1971, all securities

CABPCOL6

Goodman/"Maggio" - direct

1 were in paper form, not paper entry form, but regular pieces of  
2 certificates. So we would receive and deliver those  
3 certificates and count them, make certain that the receipts we  
4 were getting were correct, versus the money that was being  
5 charged to us.

6 "Q. How long did you do that job at Loeb and Rhodes,  
7 approximately?

8 "A. Only for a couple of months.

9 "Q. What did you do next?

10 "A. Went to a firm called Walston & Company, located in lower  
11 Manhattan on Water Street.

12 "Q. And what was Walston & Company?

13 "A. Walston & Company was a brokerage house.

14 "Q. What did you do at Walston & Company?

15 "A. Walston & Company, I was first put in the corporate bond  
16 department. Very similar to what I was doing at Loeb Rhodes  
17 with stocks, we were doing with bonds, receiving the bonds,  
18 delivering the bonds. We would clip coupons. Back in the '70s  
19 all bonds were in bearer forms. Bearer meaning whoever held  
20 the bond owned the bond. So there would be little coupons  
21 attached, and twice a year you would have to clip the coupon,  
22 send it to whoever the issuer was, and they would send you a  
23 check.

24 So we would clip coupons. Then later on, at Walston,  
25 I became a troubleshooter for corporate bonds. Any problems

CABPCOL6

Goodman/"Maggio" - direct

1 that there were in deliveries with branch offices and with  
2 other brokerage firms, I would what's called troubleshoot them.  
3 Research the problem and try to rectify it.

4 "Q. Just to be clear, Mr. Maggio, when those coupons were being  
5 clipped off the bond and being sent to the issuer, what did  
6 that relate to? What payments were received in --

7 "A. Those were interest payments.

8 "Q. So, Mr. Maggio, after working at Walston, where did you go  
9 next?

10 "A. Excuse me, sir?

11 "Q. Where was your next place of employment, Mr. Maggio?

12 "A. I went to a firm called Tucker Anthony and RL Day, which  
13 became John Hancock Securities, which became Tucker Anthony  
14 again.

15 "Q. What did you do at Tucker Anthony?

16 "A. Similar position that I had at Walston and also Loeb, Loeb  
17 Rhodes. I originally worked in the cashier's department, but  
18 soon after that, we started what they called a stock loan  
19 department and I was moved to stock loan.

20 "Q. Mr. Maggio, what was the stock loan department?

21 "A. Stock loan is a department that borrows and lends stocks.  
22 The reason why you would need to borrow a stock is, is if you  
23 sold a stock that you didn't own, you would still have to make  
24 delivery to the person you sold it to. So you would go out and  
25 borrow the stock from another brokerage firm or from a bank or

CABPCOL6

Goodman/"Maggio" - direct

1 from an ERISA account and make delivery on that stock.

2 "Q. Mr. Maggio, you can sell a stock you don't own; is that  
3 right?

4 "A. Absolutely. It's called shorting.

5 "Q. So if you sell a stock you don't own, what do you have to  
6 do?

7 "A. You still have to make delivery on that stock. You are  
8 required to make delivery within a certain period of days.

9 "Q. How does that relate to stock loans?

10 "A. Well, the stock loan department would lend out the stocks  
11 that they had. So Tucker Anthony had customers who had stocks  
12 who owned stocks on margin, and so you could lend the stocks to  
13 another brokerage firm and they would give you money. You  
14 would invest the money, but at least that would facilitate the  
15 person who sold the stock short.

16 "Q. To make delivery on that stock?

17 "A. Yes.

18 "Q. What did you do after Tucker Anthony?

19 "A. After Tucker Anthony, myself and two other gentlemen  
20 started the firm called Inland Consultants Corp.

21 "Q. Approximately what year did you and these colleagues begin  
22 Inland Consultants Corp.?

23 "A. Approximately 1978.

24 "Q. What was the business of Inland Consultants Corp.?

25 "A. Inland Consultants basically was in the stock loan

CABPCOL6

Goodman/"Maggio" - direct

1 business. The difference being was that instead of acting as a  
2 principal to the transaction, we acted as an agent, a finder.  
3 We would tell a Merrill Lynch to loan stock to Goldman Sachs,  
4 as opposed to when I was doing stock loans for Tucker Anthony.  
5 Merrill Lynch would have to loan the stock to Tucker Anthony,  
6 who would then have to loan the stock to Goldman Sachs.

7 "Q. When you were working at Inland Consultants Corp.,  
8 Mr. Maggio, did you do anything illegal during that job?

9 "A. Yes.

10 "Q. What did you do?

11 "A. We bribed set people at brokerage firms to come to Inland  
12 to borrow stocks.

13 "Q. Was that illegal?

14 "A. Yes.

15 "Q. Why?

16 "A. Well, I was bribing -- we were bribing people to borrow  
17 stocks from us at a rate that was less beneficial to the firms  
18 that they were working for. To me, I believe that is illegal.

19 We were also laundering money. In order to pay these  
20 people off in cash, we would go outside to -- I don't know if  
21 you call it a money launderer, but somebody who would give us  
22 cash, and we would give them a check and they would charge us a  
23 10 percent fee. To me, that's tax evasion.

24 "Q. How did you get the cash to pay the bribes again?

25 "A. There would be some person that would take a check; so we

CABPCOL6

Goodman/"Maggio" - direct

1 would give them a check for \$10,000. He would give us  
2 \$9,000 in cash, and he would give us a bill so, on our books  
3 and records, it would look like we had a bill to support the  
4 check that we wrote out.

5 "Q. Why did you do that? Why did you engage in that whole  
6 process?

7 "A. Why? So we could pay off the people, or we could bribe the  
8 people to borrow from us.

9 "Q. Mr. Maggio, did you change jobs, did you -- Withdrawn.

10 Did you leave Inland Consultants Corp.?

11 "A. Yes.

12 "Q. When, approximately?

13 "A. I think it was '82 or '83.

14 "Q. Where did you go?

15 "A. I went to a firm called -- at that time, it was called  
16 McMahon, Brafman & Morgan.

17 "Q. At -- I'm sorry. "What did you do at McMahon, Brafman &  
18 Morgan?

19 "A. At McMahon we started a securities lending area.

20 "Q. What did the securities lending area do?

21 "A. Basically the same thing as stock loan, but they tried to  
22 change the image and called it securities lending. What we did  
23 is cover -- borrow to cover the shorts of the company. Like I  
24 said before, sometimes traders can sell stock without an owner;  
25 so we had to borrow to cover those short sales. We would lend



CABPCOL6

Goodman/"Maggio" - direct

1 out securities. Any long securities that they owned, we would  
2 lend them out so we could get increased leverage.

3 "Q. How long were you with that company?

4 "A. Two or three years.

5 "Q. And does that bring us to approximately 1985?

6 "A. Yes.

7 "Q. Where did you go to work in 1985?

8 "A. In 1985, I went to work for Refco Securities.

9 "Q. What was Refco Securities?

10 "A. Refco Securities was a broker/dealer governed by the SEC.  
11 Members, I think, at the time of the New York Stock Exchange  
12 and the NASD.

13 "Q. Mr. Maggio, just generally, what is a broker/dealer?

14 "A. A broker/dealer is a firm that transacts in securities,  
15 equities and bonds that can deal with customers if they are so  
16 registered to do that, and are governed by certain agencies  
17 such as the Securities and Exchange Commission.

18 "Q. I think you mentioned the Securities and Exchange  
19 Commission, NASD; is that also right? What was the NASD?

20 "A. The NASD is a self-regulatory body that is National  
21 Association of Securities Dealers. That is an organization  
22 that looks after all broker/dealers that are members of that  
23 organization.

24 The NASD looks after, meaning makes certain that they  
25 are in compliance with the regulations that a broker/dealer

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Goodman/"Maggio" - direct

1 must adhere to.

2 "Q. I think you also mentioned something called a New York  
3 Stock Exchange; is that right?

4 "A. Yes.

5 "Q. Did they have a role regulating the broker/dealer that was  
6 Refco Securities?

7 "A. Yes. At that time, when Refco Securities was a broker --  
8 was a New York Stock Exchange member, they were the key, what  
9 they call SRO, self-regulatory organization, and they had a  
10 role regulating Refco Securities.

11 "Q. I think you mentioned, Mr. Maggio, that as a broker/dealer,  
12 Refco Securities dealt in both something called equities and  
13 something called bonds, right?

14 "A. Yes.

15 "Q. Simply put, what are equities?

16 "A. An equity is basically a security that represents a share  
17 of a company.

18 "Q. So a stock, Mr. Maggio?

19 "A. Yes.

20 "Q. What did you do when you first arrived at Refco Securities,  
21 Mr. Maggio?

22 "A. My sole purpose for being hired by Refco was to lend out  
23 their long positions and to cover their short positions.

24 "Q. Mr. Maggio, I'm just going to ask you to take one step back  
25 there. When you say long positions and short positions, just

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Goodman/"Maggio" - direct

1 what do you mean by that?

2 "A. What I mean by long position is if I go out and buy 100  
3 shares of IBM, I now own 100 shares of IBM. And on Wall Street  
4 the lingo would be called they're long IBM, which means I own  
5 it; I'm long it. If you go out and sell IBM, you don't own it;  
6 you're short IBM. The same way as I said you can short stock  
7 without actually owning it.

8 "Q. Mr. Maggio, just remind us what were you doing with respect  
9 to long positions on the one hand and short positions on the  
10 other?

11 "A. When I went to Refco Securities, I believe the sole  
12 business was proprietary trading and what I mean by that is  
13 they didn't have any customers. They didn't deal with many  
14 customers and most of their money was made by trading for their  
15 own account.

16 So he would only -- the chief trader would only get a  
17 certain amount of money to work with, let's say 20 million.  
18 Well, normally, if you are a mutual fund, you pay \$20 million  
19 worth of stock and that's what you have, 20 million worth of  
20 stock. But when you lend out securities, you have the ability  
21 to leverage that, to make it much bigger. So if I can lend out  
22 \$20 million worth of stock and get 15 million cash for that,  
23 well, now he has \$15 million he can trade. If I can buy that,  
24 he buys that, and I can lend that out. He's got another 12  
25 million.

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Goodman/"Maggio" - direct

1           You could make that 20 million worth of stock  
2           somewhere close to 70 million or \$80 million on the short side  
3           a little bit different. He would go out and sell stocks short,  
4           and then it would be our job to go ahead and go on the street  
5           to make certain that we can borrow it so he can facilitate  
6           delivery.

7           "Q. Mr. Maggio, were you promoted after you arrived at Refco  
8           Securities?

9           "A. Yes.

10          "Q. What were some of the different jobs that you had after you  
11          were promoted?

12          "A. At Refco?

13          "Q. Yes, at Refco, Mr. Maggio.

14          "A. At Refco Securities, I became president in, I believe it  
15          was, 1991. I was senior vice president of Refco Group. I then  
16          became an executive vice president in Refco Group. I was a  
17          director and vice president of Refco Capital Markets. I was  
18          then president of Refco Capital Markets. I was also directors  
19          of various Refco subsidiaries, such as Refco Singapore, Refco  
20          SA, and I think maybe even Forstmann-Leff.

21          "Q. During your time at Refco, did you ever meet someone named  
22          Joseph Collins?

23          "A. Yes.

24          "Q. Who was Joseph Collins?

25          "A. Joseph Collins was an attorney, an outside attorney that

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Goodman/"Maggio" - direct

1 Refco used.

2 "Q. What law firms did he work at during the time that you were  
3 employed by Refco?

4 "A. When I first was employed by Refco, I believe he was at a  
5 firm called Schiff Hardin, and then after that, he left Schiff  
6 Hardin and went to Mayer Brown.

7 "Q. We'll come back to that, Mr. Maggio. Did you hold any  
8 professional licenses while you were at Refco?

9 "A. Yes.

10 "Q. What licenses did you hold while you were at Refco?

11 "A. Series 3, which is basically a registration to transact in  
12 commodities and futures.

13 Series 4, which is a registered options principal.

14 Series 7, which is a general securities license.

15 Series 8, which is a branch office license.

16 Series 24, which is general principal.

17 And a Series 63, which is sort of like a blue sky,  
18 which gives me the ability to register in any state.

19 "Q. Who issued those licenses to you, Mr. Maggio?

20 "A. The NASD.

21 "Q. What is the status of those licenses?

22 "A. I believe they are terminated.

23 "Q. Mr. Maggio, in connection with your work at Refco, did you  
24 commit any crimes?

25 "A. Yes.

CABPCOL6

Goodman/"Maggio" - direct

1 "Q. Generally speaking, what types of crimes did you commit?

2 "A. I helped defraud investors, shareholders to the tune of  
3 over \$2 billion -- 2 billion.

4 "Q. Did you participate in transactions that were designed to  
5 hide the existence of monies owed to Refco by RGHI?

6 "A. Yes.

7 "Q. Were those transactions documented?

8 "A. Yes.

9 "Q. For what years were they documented, Mr. Maggio?

10 "A. I believe they were documented from 2000 to 2005.

11 "Q. Did anyone assist you in documenting those transactions  
12 during that period, Mr. Maggio?

13 "A. Yes.

14 "Q. Who?

15 "A. Joe Collins at Mayer Brown.

16 "Q. Now, Mr. Maggio, did you also commit crimes with respect to  
17 your personal taxes? I really only want to hear now about any  
18 crimes regarding personal taxes.

19 "A. Personal taxes?

20 "Q. Yes.

21 "A. Yes.

22 "Q. What crime did you commit with respect to your personal  
23 taxes?

24 "A. I failed to report income earned in New York State for a  
25 period of four years, four or five years. I received a

CABPCOL6

Goodman/"Maggio" - direct

1 corporate apartment from Refco that I did not declare on my  
2 taxes. I received airfare, be it commercial or private, to my  
3 home in Florida from Refco, and I did not declare it on my  
4 taxes. I also sometimes used my entertainment, such as dinners  
5 and stuff, personally that the company paid for, and I did not  
6 declare them on my taxes.

7 "Q. Mr. Maggio, did you commit perjury while you were employed  
8 at Refco?

9 "A. Yes.

10 "Q. More than once, Mr. Maggio?

11 "A. Yes.

12 "Q. Mr. Maggio, when did you leave Refco?

13 "A. October 10th, 2005.

14 "Q. Did you leave Refco voluntarily, Mr. Maggio?

15 "A. No. I was given an indefinite leave of absence.

16 "Q. When were you put on the leave or given a leave of absence  
17 by Refco, Mr. Maggio?

18 "A. I believe it was sometime on that weekend, just before  
19 October 10th. Sorry. So it was either the 7th, 8th, 9th or  
20 10th.

21 "Q. October 10th, was that a Monday?

22 "A. I believe it was either on Friday or Saturday before, right  
23 before that. So that would be the 7th or the 8th.

24 "Q. Were you given an indefinite leave of absence?"

25 THE COURT: "Why"?

CABPCOL6

Goodman/"Maggio" - direct

1 "Q. I'm sorry. "Why were you given an indefinite leave of  
2 absence, Mr. Maggio?

3 "A. Because the company was discovering the fraud that Refco --  
4 sorry, RGHI was hiding hundreds of millions of dollars of debt.

5 "Q. Mr. Maggio, you mentioned the date Monday, October 10th.  
6 Where were you on Monday, October 10th, immediately after  
7 having been put on leave?

8 "A. I was at the U.S. Attorney's Office at Saint Andrews Plaza.

9 "Q. Why were you at the U.S. attorney's office, Mr. Maggio?

10 "A. I was there to cooperate.

11 "Q. Why were you attempting to cooperate with the government on  
12 October 10th of 2005?

13 "A. I was hoping that I would get some sort of leniency at  
14 sentencing.

15 "Q. Mr. Maggio, did you enter into a cooperation agreement?

16 "A. Yes, sir.

17 "Q. In connection with that agreement, did you plead guilty?

18 "A. Yes.

19 "Q. To what crimes did you plead guilty, Mr. Maggio?

20 "A. Four counts of felony; one was conspiracy to commit a  
21 felony, two securities frauds and one wire fraud.

22 "Q. Mr. Maggio, what is the total term of imprisonment that you  
23 face in connection with having pled guilty to those crimes?

24 "A. 65 years.

25 "Q. Mr. Maggio, did you sign a cooperation agreement?



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Goodman/"Maggio" - direct

1 "A. Yes.

2 "Q. What are your obligations under the cooperation agreement  
3 that you signed?

4 "A. My obligations are to cooperate with the U.S. Attorney's  
5 Office, to testify if they need me, and to tell the truth.

6 "Q. Mr. Maggio, in connection with pleading guilty, did you  
7 face any financial penalties?

8 "A. Yes, sir.

9 "Q. What financial penalties did you face?

10 "A. I forfeited everything I own, everything, every asset,  
11 cash, cars, properties. I think the total was close to 23  
12 million.

13 "Q. What do you live on now, Mr. Maggio?

14 "A. I live on my wife's income.

15 "Q. Has your wife been successful? Do you have a good living  
16 now?

17 "A. My wife worked at -- on Wall Street also, several jobs.  
18 She's done extremely well over -- in her life, and she has  
19 enough money for both of us to live on.

20 "Q. Now, Mr. Maggio, you said that you forfeited certain  
21 assets; is that correct?

22 "A. Yes.

23 "Q. Do you currently have any assets that were bought with the  
24 Refco money that you had earned?

25 "A. Yes.

CABPCOL6

Goodman/"Maggio" - direct

1 "Q. What assets are those?

2 "A. I have a 26-foot Glacier Bay boat. I have an equity  
3 membership in a golf club. I have a horse partnership, and she  
4 has also some wine that we bought back.

5 "Q. Mr. Maggio, you said that she has. How is it that you have  
6 those items that you have bought with Refco money originally?

7 "A. She went out and she bought it back.

8 "Q. Who is 'she'?

9 "A. I'm sorry. 'She' is my wife bought it back from the, I  
10 guess, the marshal service, the marshal's office.

11 "Q. With her money that she made during the course of her  
12 career?

13 "A. Yes.

14 "Q. Now, Mr. Maggio, we talked about your obligations under the  
15 plea agreement that you signed. What is your understanding as  
16 to what the government's obligations are under that plea  
17 agreement?

18 "A. My understanding is that the government will provide some  
19 sort of letter to the judge at sentencing. I believe it's  
20 called a 5K letter.

21 "Q. And what is a 5K letter?

22 "A. 5K letter is a letter that the prosecutor or the U.S.  
23 Attorney's Office will provide to a judge at sentencing to just  
24 explain exactly how I cooperated and maybe ask for leniency as  
25 it relates to whatever guidelines that the judge must follow.

CABPCOL6

Goodman/"Maggio" - direct

1 "Q. And who decides what sentence you will get, Mr. Maggio?

2 "A. The judge.

3 "Q. Does the government decide?

4 "A. No.

5 "Q. And if you get that letter from the government, what is the  
6 highest sentence that you can get?

7 "A. 65 years.

8 "Q. What is the lowest sentence that you can get?

9 "A. Probation.

10 "Q. And what is your hope, Mr. Maggio?

11 "A. I hope for probation.

12 "Q. Mr. Maggio, has anyone promised that you would get such a  
13 sentence?

14 "A. No.

15 "Q. Now, Mr. Maggio, what happens if you violate any of the  
16 terms of your agreement?

17 "A. If I violate any of the terms of my agreement, they are not  
18 obligated, meaning they -- I'm sorry, the U.S. Attorney's  
19 Office are not obligated to provide such 5K letter.

20 "Q. What happens to your plea agreement if you violate the  
21 terms of your agreement? Do you get your plea back?

22 "A. No. I cannot -- I cannot withdraw my plea. My plea is my  
23 plea. I am guilty.

24 "Q. Mr. Maggio, what happens if you lie to the government?

25 "A. If I lie to the government? They will not provide the 5K

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Goodman/"Maggio" - direct

1 letter. I will not have that letter at sentencing, and I will  
2 face that 65 years.

3 "Q. And what if you perjure yourself or lie when testifying,  
4 Mr. Maggio?

5 "A. If I perjure myself or lie while I'm testifying, well, then  
6 not only will they not provide the 5K letter at sentencing, but  
7 I'm subject to perjury charges.

8 "Q. And can you be charged with obstruction of justice?

9 "A. Yes.

10 "Q. And if your agreement is torn up, Mr. Maggio, what's the  
11 maximum term of imprisonment you face?

12 "A. 65 years.

13 "Q. Now, Mr. Maggio, are you involved or have you been involved  
14 in any other lawsuits relating to Refco?

15 "A. Yes.

16 "Q. With whom?

17 "A. There are several, by creditors, by investors, by TH Lee.  
18 Those are three that I'm aware of.

19 "Q. Are those suits ongoing?

20 "A. Yes, they're active.

21 "Q. How about with respect to the SEC, Mr. Maggio, have you had  
22 any matters with the SEC or the Securities & Exchange  
23 Commission as a result of your conduct at Refco?

24 "A. Yes.

25 "Q. What is the status of that matter?

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Goodman/"Maggio" - direct

1 "A. That was settled with the SEC.

2 "Q. What was the -- What were the terms of your settlement with  
3 the Securities & Exchange Commission?

4 "A. They barred me for life from -- from working in the  
5 securities and investing business again.

6 "Q. Mr. Maggio, was there any monetary penalty associated with  
7 your settlement with the Securities & Exchange Commission?

8 "A. No. All my assets were forfeited to the U.S. government.

9 "Q. Now, Mr. Maggio, you said before that you met  
10 Mr. Collins -- excuse me. Now, Mr. Maggio, you said before  
11 that you met Mr. Collins when you were working at Refco; is  
12 that right?"

13 THE COURT: Excuse me, Mr. Imperatore. Are you going  
14 to a different topic now?

15 MR. IMPERATORE: Yes, your Honor.

16 THE COURT: This might be a good time to break. Is  
17 that all right with you?

18 MR. IMPERATORE: That's fine, your Honor.

19 THE COURT: All right. Ladies and gentlemen, let's  
20 break for the day. Now, would you follow the normal rules,  
21 leave your folders on your chairs, take your notebooks with  
22 you. Please don't discuss the case among yourself or with  
23 anyone else. Please do not do any research on the case. Your  
24 coffee will be waiting for you at 9:30 in the morning. Let's  
25 be as prompt as we were today, please. You were great. See

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1 you in the morning. Enjoy the nice weather.

2 JUROR: Good night.

3 THE COURT: Good night. Have a nice evening. Thank  
4 you for your attention today.

5 (Jury exits)

6 THE COURT: Gilbert, you'll give us the high sign?

7 THE DEPUTY CLERK: Yes.

8 THE COURT: You may step down. Anything else on the  
9 record, friends?

10 MR. CHERNOFF: No, your Honor, just if there's  
11 anything, your Honor wants to let the jury know that tomorrow  
12 we'll be doing this all day; so --

13 THE COURT: Oh, good. So they should bring food with  
14 them.

15 MR. CHERNOFF: It's about eight hours. I think we'll  
16 get to Mr. Schwartz's cross, but the entire time of the -- we  
17 think we have about eight hours more of this to go because, for  
18 the witness, it took over three days. We, of course, have  
19 taken out what we could, but --

20 THE COURT: Okay. Counsel, you all have been copied  
21 on this letter from Lori, L-o-r-i, Martin from the Wilmer Hale  
22 firm saying that Wilmer Hale represents various Credit Suisse  
23 and other folks and informing us that they will be invoking  
24 their attorney/client privilege. So once you've had a chance  
25 to look at it, let me know if there's anything we need to do

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Goodman/"Maggio" - direct

1 about it. Thank you.

2 MR. CHERNOFF: Thank you, your Honor.

3 MR. LEVY: Thank you, your Honor.

4 (Adjourned to October 12, 2012, at 10:00 a.m.)

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